



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY RESERVE COMMAND
1401 DESHLER STREET SW
FORT MCPHERSON, GA 30330-2000

REPLY TO
ATTENTION OF:

27 SEP 2010

ARRC-CG

MEMORANDUM FOR MG Jeffery L. Arnold, (b) (6)

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed to serve as an Investigating Officer pursuant to Army Regulation (AR) 15-6 in an informal investigation (b) (6). (b) (6) 94th Division (DIV) (Force Sustainment). Additionally, you will address (b) (6) actions in authoring a book and the 94th DIV's review of the same.
2. (b) (6) Military Intelligence Readiness Command, will serve as Assistant Inquiry Officer in this case. She can be reached at (b) (6) or (b) (6) @us.army.mil.
3. This tasking takes priority over your routine duties. It will be your primary responsibility until you submit your completed report of investigation as provided below.
4. No respondent is designated in this investigation. Therefore, you will use the informal procedures set forth in AR 15-6. All witness statements will be taken under oath and made in writing. Use DA Form 2823, Sworn Statement, to record all sworn statements. If, during the course of your investigation, you believe that a witness may have engaged in any type of criminal misconduct, you will advise that witness of his/her right against self-incrimination and right to counsel. Military suspects will be informed of their rights under Article 31, Uniform Code of Military Justice, and civilian suspects will be advised of their rights under the 5th Amendment to the US Constitution. Use DA Form 3881, Rights Warning Procedure/Waiver Certificate, to accomplish the rights advisement for both military and civilian suspects. You must obtain an acknowledgment and waiver of those rights before conducting any further questioning of a witness you believe has committed a criminal offense.
5. In your report of investigation, you will make specific findings of fact on each of the matters set forth in the enclosed Listing of Issues, along with any other matters you wish me to consider. Use DA Form 1574, Report of Proceedings by Investigating Officer/ Board of Officers, to complete your report of investigation. Do not include classified information in your report. Submit the original and a copy of your report to me, through the US Army Reserve Command (USARC) Office of the Staff Judge Advocate (OSJA),

ARRC-CG

SUBJECT: Appointment of Investigating Officer

no later than 30 days from the date of this appointment. The Staff Judge Advocate, USARC, is authorized to grant extensions for good cause.

6. (b) (6) USARC OSJA, will serve as your legal advisor. (b) (6) can be reached at (b) (6) or at (b) (6). You must consult with (b) (6) prior to beginning your investigation.

7. (b) (6) Army Reserve Communications, will serve as your technical advisor/expert witness regarding Public Affairs matters. He can be reached at (b) (6) or at (b) (6)@us.army.mil.

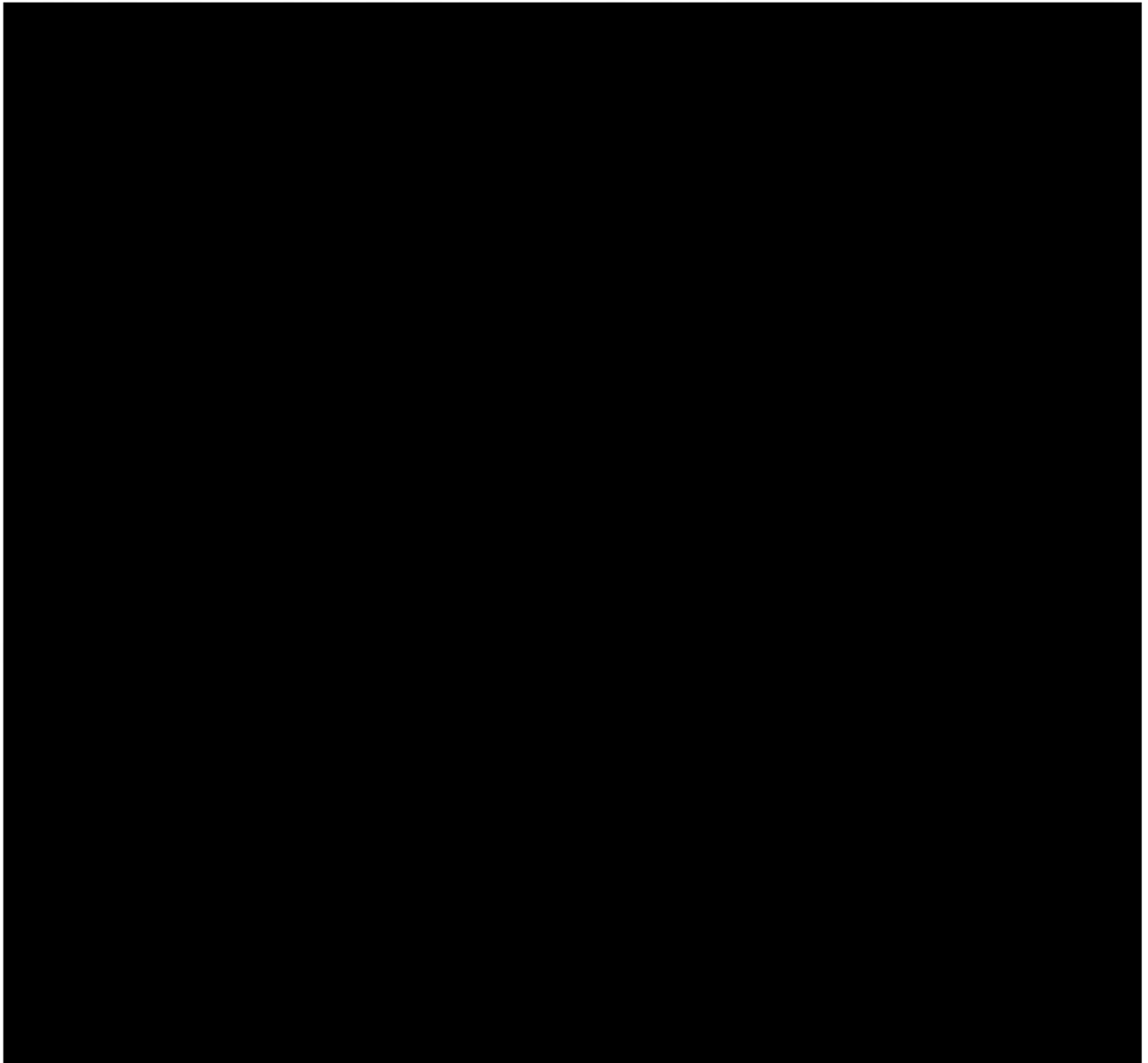
(b) (6)

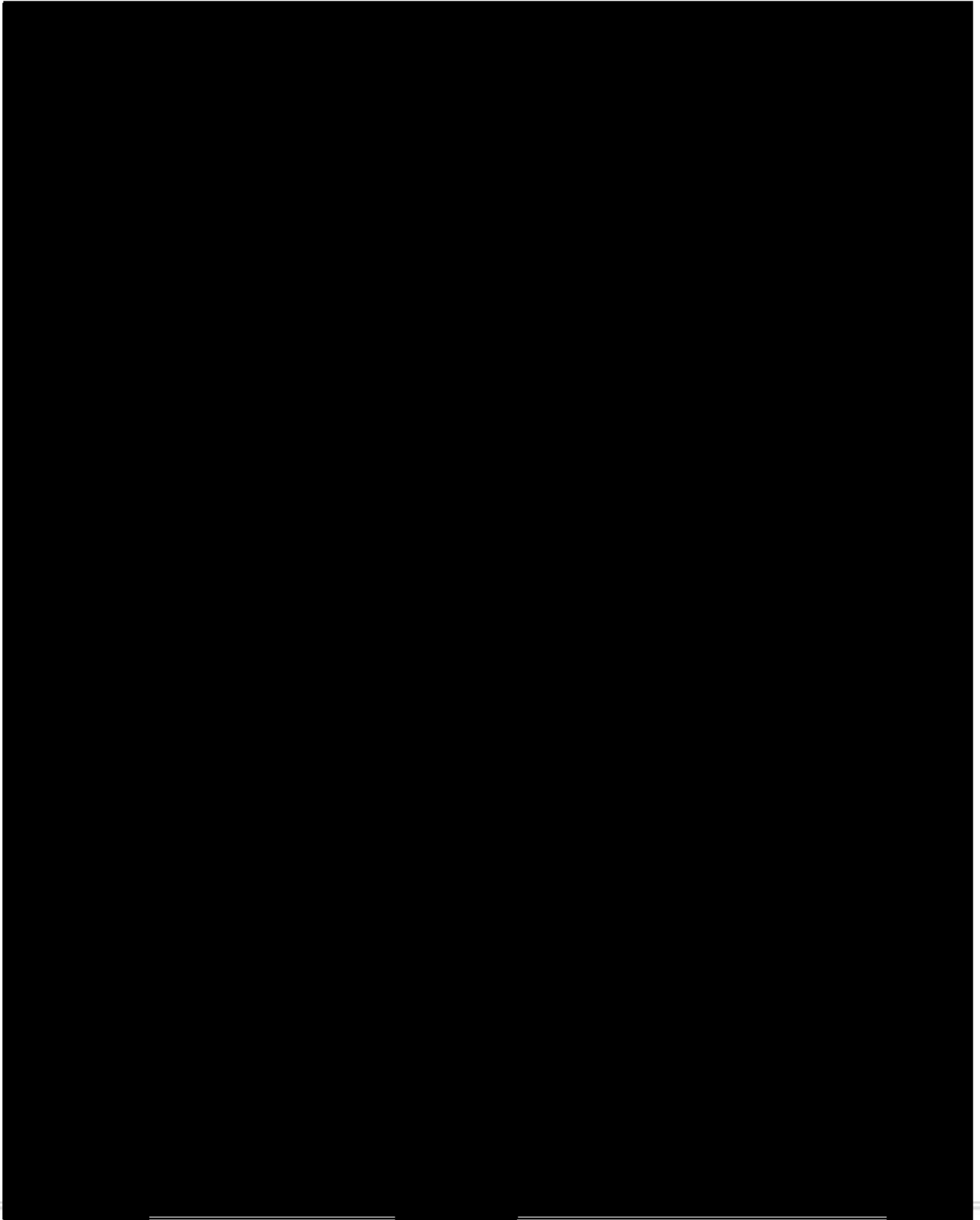
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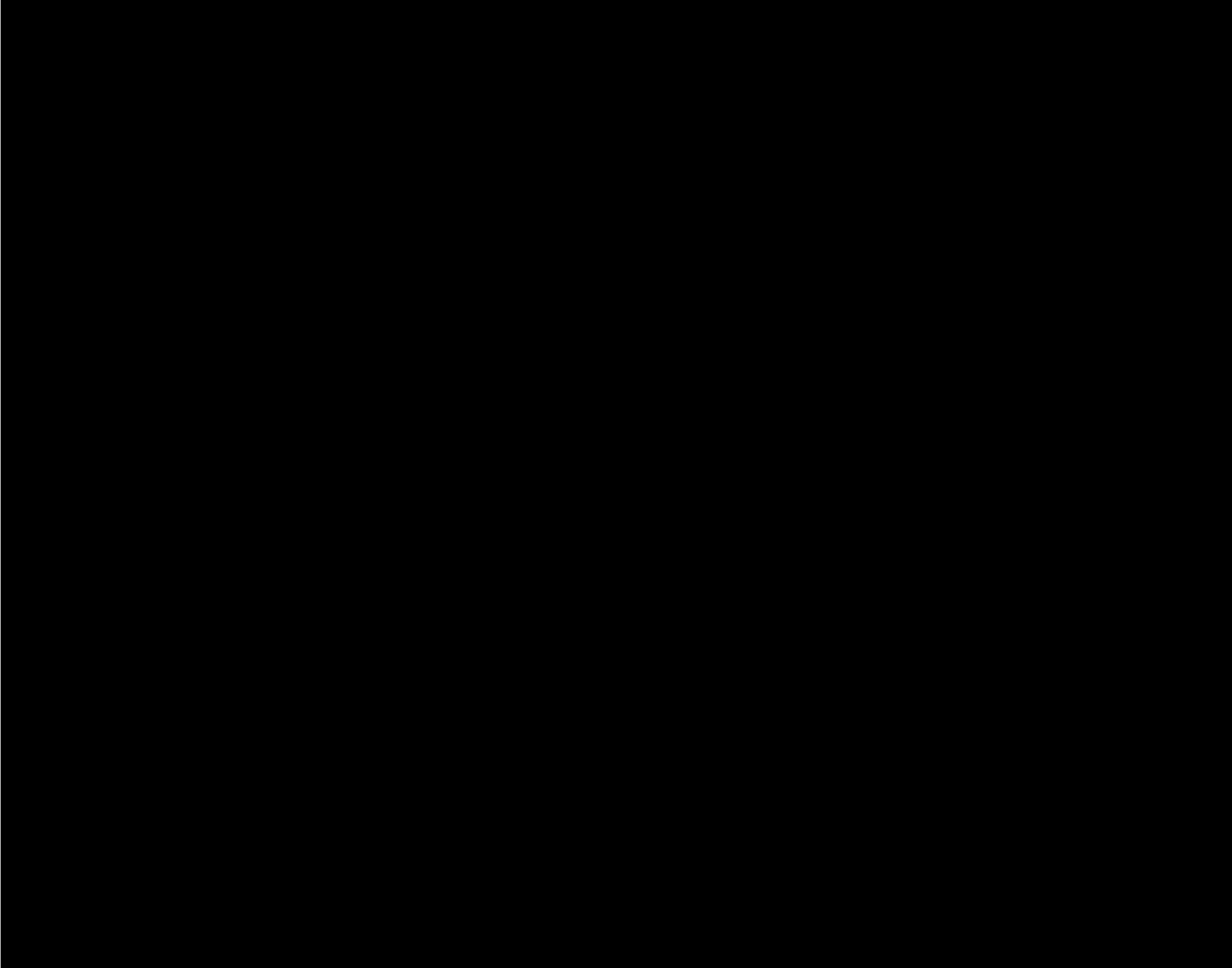
JACK C. STULTZ
Lieutenant General, US Army
Commanding

CF: (b) (6)

Listing of Issues







7. To what extent was the 94th DIV chain of command aware of (b) (6) book writing activities? Be sure to address the following:

- a. Identify the officials of the 94th DIV chain of command who were aware of (b) (6) writing activities.
- b. What was the understanding of such officials as to the nature of (b) (6) writing activities (i.e., where, when, and how (b) (6) was researching, writing, editing, and obtaining reviews of (b) (6) book)?
- c. What was the understanding of such officials as to the substance of the book (b) (6) was writing?
- d. How and when did such officials learn of (b) (6) writing activities?

e. How and when did such officials learn of (b) (6) efforts to have (b) (6) book commercially published?

f. Did such officials have any information about (b) (6) providing manuscript copies of (b) (6) book to publishers or agents in (b) (6) efforts to get it published?

g. What guidance, if any, did any officials of the 94th DIV provide to (b) (6) regarding (b) (6) writing activities?

h. Did (b) (6) research, write, or edit (b) (6) book while (b) (6) was in a military duty status?

i. Did (b) (6) research, write, or edit (b) (6) book using government resources of any kind, to include a government information system?

j. Did any officials of the 94th DIV view or read any portions of (b) (6) book/manuscript prior to (b) (6) submission of it for a pre-publication review? If so, for what purpose?

8. What rules govern the pre-publication review of speeches, books, and other writings authored by Soldiers? Be sure to address the following:

a. Identify all Department of Defense (DoD) and Department of the Army directives, regulations, and policies pertaining to such review.

b. Set forth the relevant portions of such directives, regulations, and policies.

c. Describe how such a review must take place. Specifically, identify who must review the draft writing, explain the nature of each reviewer's examination, and identify who must finally approve the speech, book, or other writing prior to publication or public release.

9. Set forth the facts and circumstances surrounding the 94th DIV's pre-publication review of (b) (6) book entitled (b) (6). Be sure to address the following:

a. When was the draft book submitted for review?

b. Who reviewed the draft book?

c. What was the scope of each reviewer's examination of the draft book?

d. What was each reviewer's determination regarding the propriety of the draft book's publication?

e. Who approved the publication of the draft book?

f. What was each reviewer's and the approver's knowledge of the pre-publication review rules referenced in para 8 above?

g. What legal advice was provided to the reviewers and/or the approving authority regarding the nature and sufficiency of the pre-publication review of the draft book?

h. Did any officials of the 94th DIV contact or attempt to contact officials of other DoD Components, to include the Defense Intelligence Agency (DIA) or the US Special Operations Command, to coordinate on the pre-publication reviews it conducted of (b) (6) book?

10. Did (b) (6) draft book contain classified information that was not approved for release by appropriate authorities? [Note: Do not include or describe any such classified information in this investigative report.]

11. If the answer to Issue 10 is yes, were the 94th DIV reviewers and/or the approving authority aware that the draft book contained classified information that was not approved for release by appropriate authorities? If so, be sure to address the following:

a. Identify each reviewer and/or approver who was aware of such fact.

b. When did the reviewers and/or approver become aware of such fact?

c. How did such reviewers and/or approver become aware of such fact?

d. What actions did such reviewers and/or approver take upon becoming aware of such fact?

e. How and when did any officials of the 94th DIV learn that classified information was contained in (b) (6) book?

f. What representations did (b) (6) make to officials in the 94th DIV regarding the presence of classified information in (b) (6) book? When did (b) (6) make such representations?

12. Before or during the 94th DIV's review of the draft book, did (b) (6) make any statements to Army officials (b) (6)? If so, be sure to address the following:

a. To whom did (b) (6) make such statements?

b. When did (b) (6) make such statements?

c. What was the content of (b) (6) statements?

13. Before or during the 94th DIV's review of the draft book, did (b) (6) make any statements to Army officials regarding whether the book contained classified information? If so, be sure to address the following:

a. To whom did (b) (6) make such statements?

b. When did (b) (6) make such statements?

c. What was the content of (b) (6) statements?

[REDACTED]

15. Provide a detailed history of (b) (6) activities involving the research, writing, editing, and efforts to publish (b) (6) book. Be sure to address the following:

[REDACTED]

e. To whom did (b) (6) provide copies of (b) (6) manuscript (or portions thereof) for review or advice prior to or after submission to (b) (6) publisher? What is the disposition of these review/comment manuscripts or portions of manuscripts?

[REDACTED]

[REDACTED]

i. What actions did (b) (6) take to obtain a pre-publication review of (b) (6) book from DoD or the Army?

j. What was (b) (6) knowledge regarding the requirement for such a pre-publication review?

k. Where did (b) (6) obtain such knowledge?

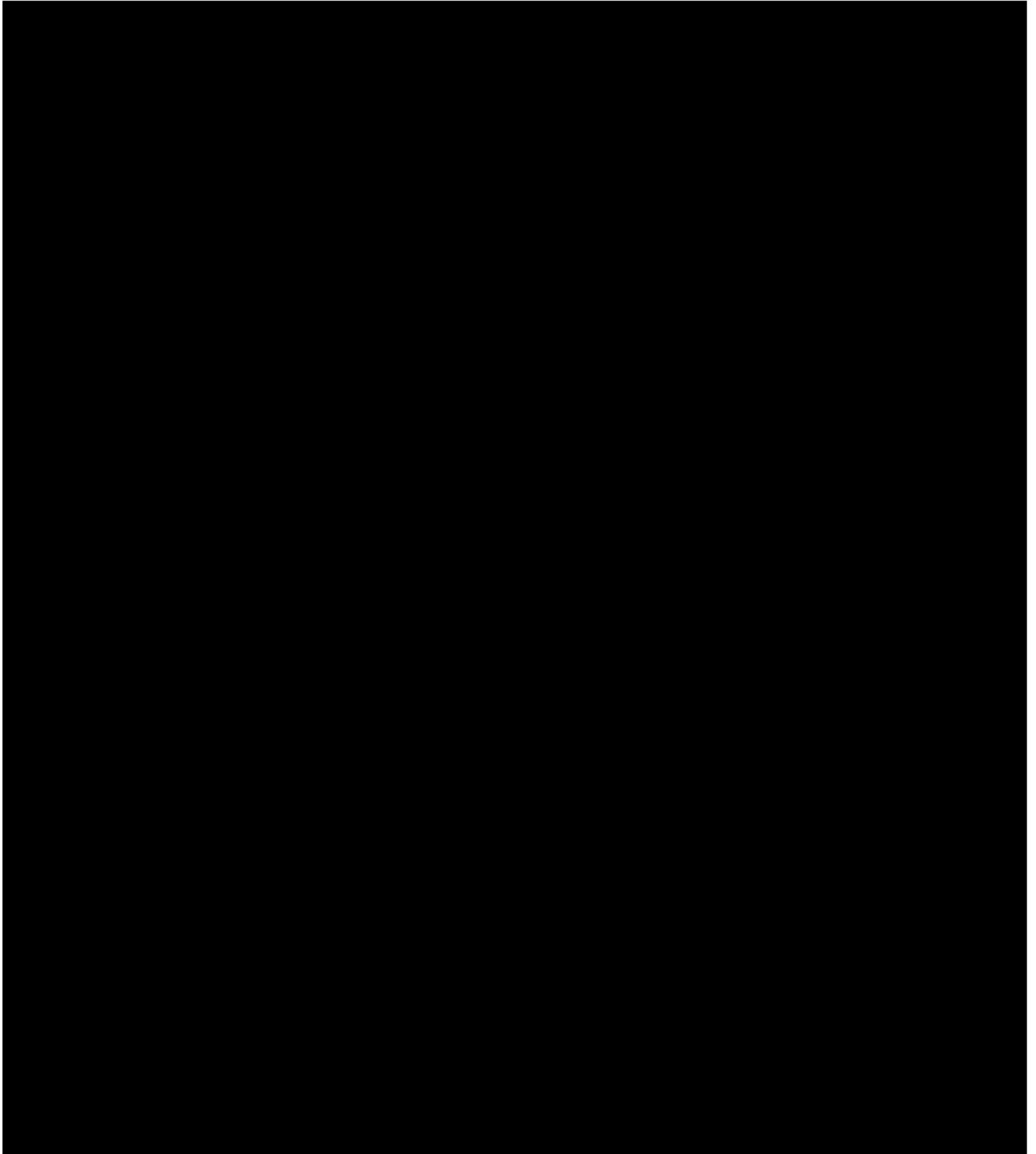
[REDACTED]

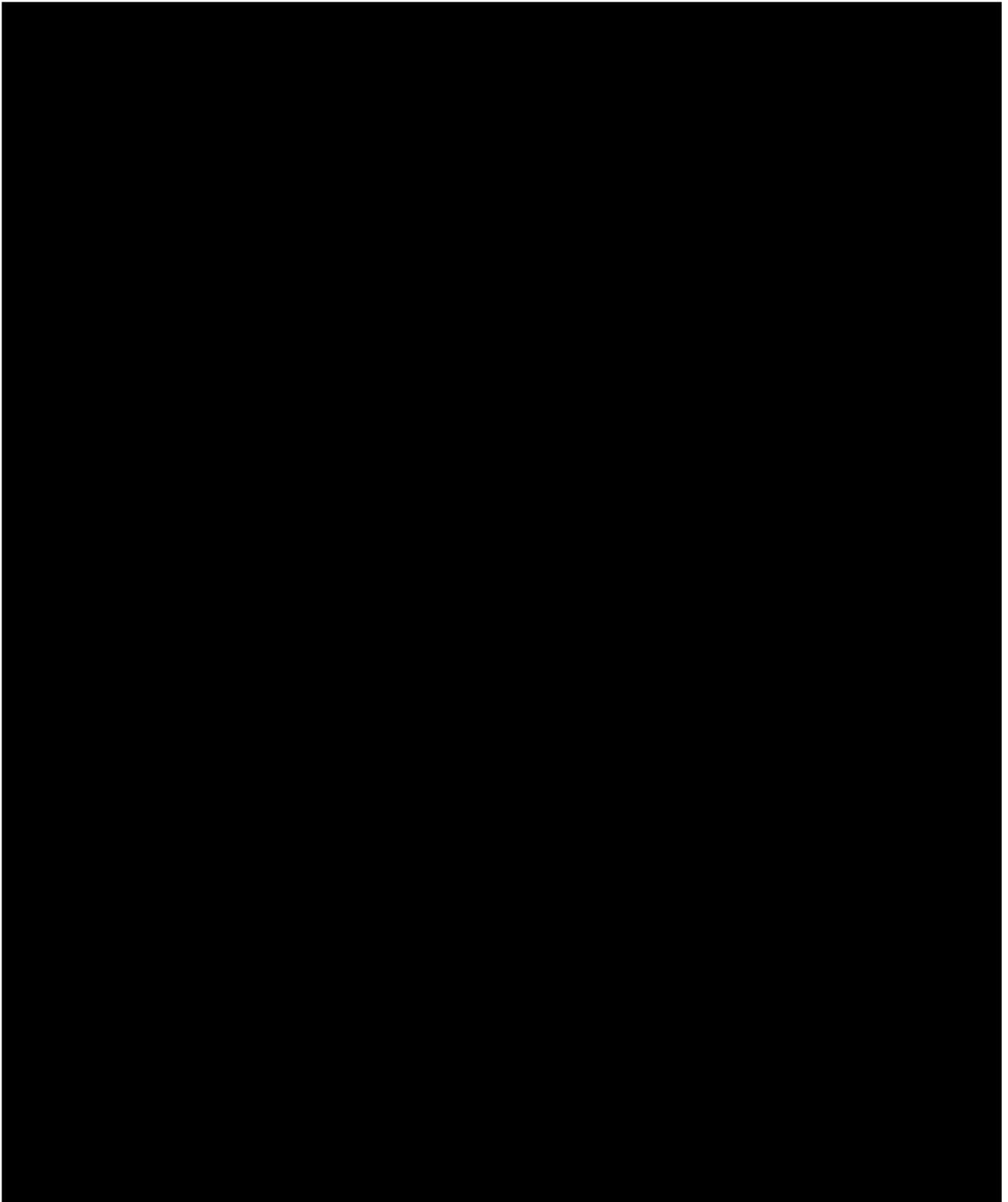
n. Was (b) (6) aware of the provisions in the non-disclosure agreements that address the requirement to obtain a review of any proposed writing that involves duties or information covered under the non-disclosure agreement when (b) (6) was researching, writing, editing, or making efforts to obtain commercial publication of his book?

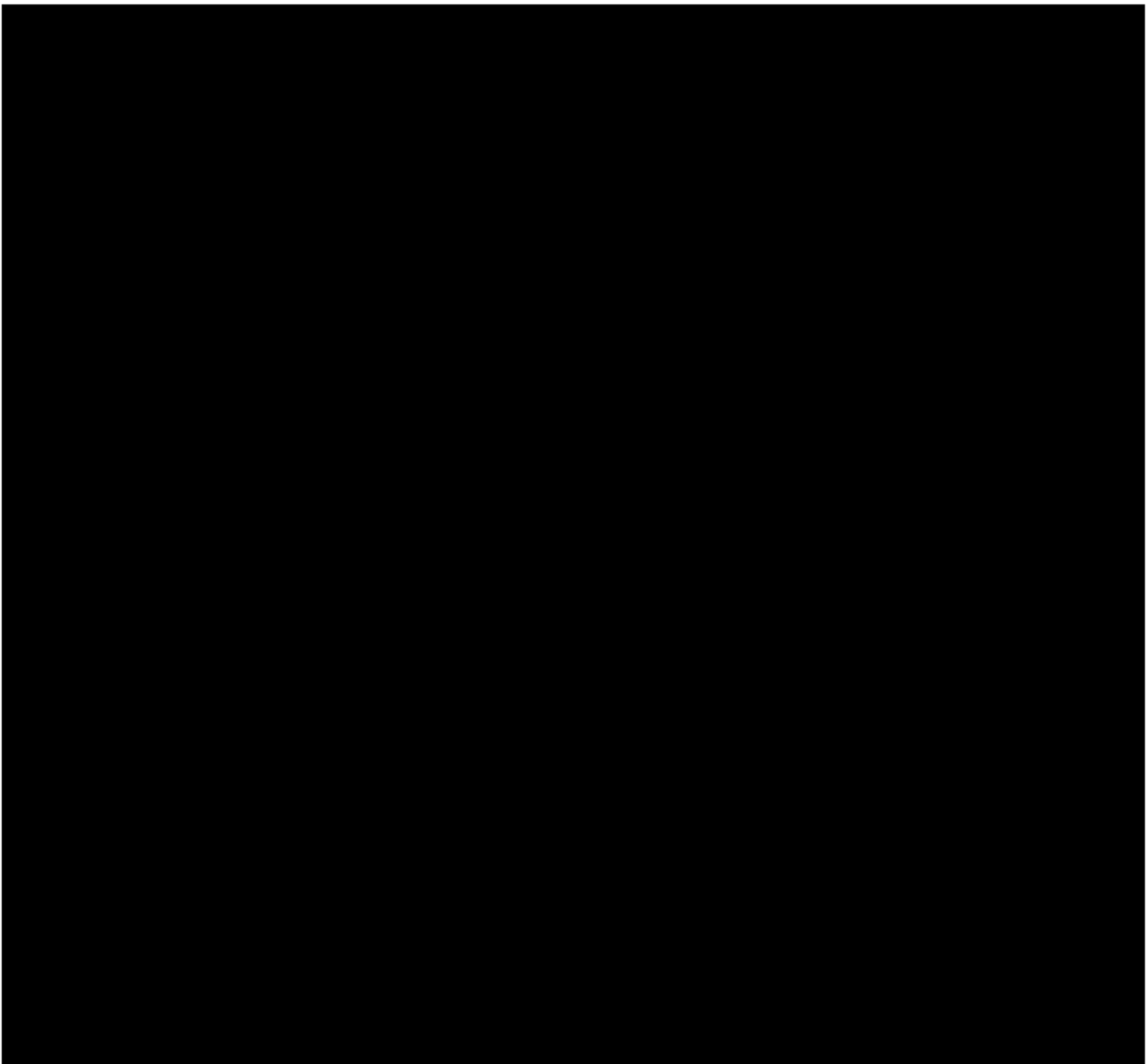
o. Was (b) (6) aware that (b) (6) book contained information regarding DIA training and operational activities prior to being so informed by DoD officials in July/August 2010?

p. What steps did (b) (6) take to ensure (b) (6) book did not include classified information both before and after (b) (6) was informed by DoD officials in July/August 2010 that it did?

Listing of Issues







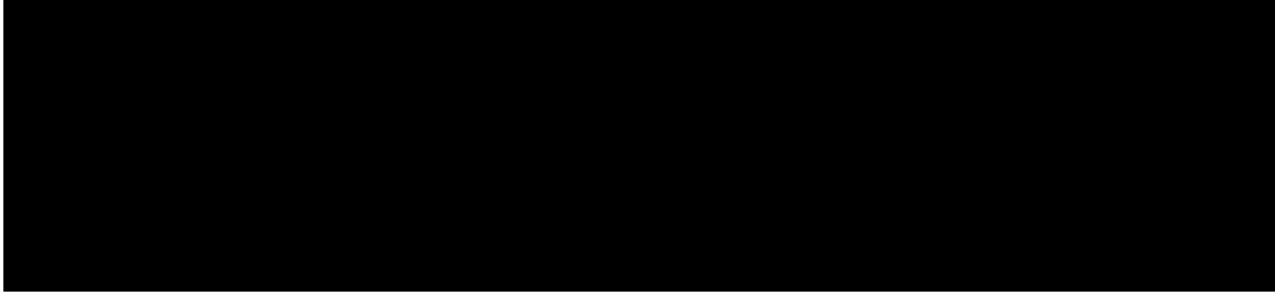
7. To what extent was the 94th DIV chain of command aware of (b) (6) book writing activities? Be sure to address the following:

a. Identify the officials of the 94th DIV chain of command who were aware of (b) (6) writing activities.

b. What was the understanding of such officials as to the nature of (b) (6) writing activities (i.e., where, when, and how (b) was researching, writing, editing, and obtaining reviews of (b) book)?

c. What was the understanding of such officials as to the substance of the book (b) (6) was writing?

- d. How and when did such officials learn of (b) (6) writing activities?
 - e. How and when did such officials learn of (b) (6) efforts to have (b) book commercially published?
 - f. Did such officials have any information about (b) (6) providing manuscript copies of (b) book to publishers or agents in (b) efforts to get it published?
 - g. What guidance, if any, did any officials of the 94th DIV provide to (b) (6) regarding (b) writing activities?
 - h. Did (b) (6) research, write, or edit (b) book while (b) was in a military duty status?
 - i. Did (b) (6) research, write, or edit (b) book using government resources of any kind, to include a government information system?
 - j. Did any officials of the 94th DIV view or read any portions of (b) (6) book/manuscript prior to (b) submission of it for a pre-publication review? If so, for what purpose?
8. What rules govern the pre-publication review of speeches, books, and other writings authored by Soldiers? Be sure to address the following:
- a. Identify all Department of Defense (DoD) and Department of the Army directives, regulations, and policies pertaining to such review.
 - b. Set forth the relevant portions of such directives, regulations, and policies.
 - c. Describe how such a review must take place. Specifically, identify who must review the draft writing, explain the nature of each reviewer's examination, and identify who must finally approve the speech, book, or other writing prior to publication or public release.
9. Set forth the facts and circumstances surrounding the 94th DIV pre-publication review of (b) (6) book entitled "(b) (6)". Be sure to address the following:
- a. When was the draft book submitted for review?
 - b. Who reviewed the draft book?
 - c. What was the scope of each reviewer's examination of the draft book?
 - d. What was each reviewer's determination regarding the propriety of the draft book's publication?

- e. Who approved the publication of the draft book?
 - f. What was each reviewer's and the approver's knowledge of the pre-publication review rules referenced in para 8 above?
 - g. What legal advice was provided to the reviewers and/or the approving authority regarding the nature and sufficiency of the pre-publication review of the draft book?
 - h. Did any officials of the 94th DIV contact or attempt to contact officials of other DoD Components [to include the Defense Intelligence Agency (DIA) or the US Special Operations Command] to coordinate on the pre-publication reviews it conducted of (b) (6) book?
10. Did (b) (6) draft book contain classified information that was not approved for release by appropriate authorities? Prepare a classified annex to your report of investigation to hold all classified exhibits, findings, and recommendations you intend to include in your report. No information classified above SECRET/NOFORN should be included in your report.
11. If the answer to Issue 10 is yes, were the 94th DIV reviewers and/or the approving authority aware that the draft book contained classified information that was not approved for release by appropriate authorities? If so, be sure to address the following:
- a. Identify each reviewer and/or approver who was aware of such fact.
 - b. When did the reviewers and/or approver become aware of such fact?
 - c. How did such reviewers and/or approver become aware of such fact?
 - d. What actions did such reviewers and/or approver take upon becoming aware of such fact?
 - e. How and when did any officials of the 94th DIV learn that classified information was contained in (b) (6) book?
 - f. What representations did (b) (6) make to officials in the 94th DIV regarding the presence of classified information in (b) book? When did (b) make such representations?
- 

[REDACTED]


13. Before or during the 94th DIV review of the draft book, did (b) (6) make any statements to Army officials regarding whether the book contained classified information? If so, be sure to address the following:

- a. To whom did (b) (6) make such statements?
- b. When did (b) (6) make such statements?
- c. What was the content of (b) (6) statements?

[REDACTED]

15. Provide a detailed history of (b) (6) activities involving the research, writing, editing, and efforts to publish (b) (6) book. Be sure to address the following:

- [REDACTED]
- e. To whom did (b) (6) provide copies of (b) (6) manuscript (or portions thereof) for review or advice prior to or after submission to (b) (6) publisher? What is the disposition of these review/comment manuscripts or portions of manuscripts?
- [REDACTED]



i. What actions did (b) (6) take to obtain a pre-publication review of (b) book from DoD or the Army?

j. What was (b) (6) knowledge regarding the requirement for such a pre-publication review?

k. Where did (b) (6) obtain such knowledge?

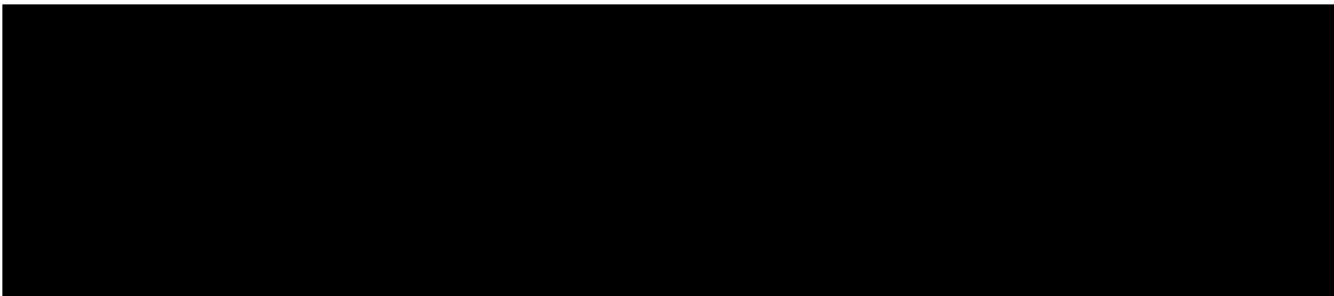


n. Was (b) (6) aware of the provisions in the non-disclosure agreements that address the requirement to obtain a review of any proposed writing that involves duties or information covered under the non-disclosure agreement when (b) was researching, writing, editing, or making efforts to obtain commercial publication of (b) book?

o. Was (b) (6) aware that (b) book contained information regarding DIA training and operational activities prior to being so informed by DoD officials in July/August 2010?

p. What steps did (b) (6) take to ensure (b) book did not include classified information both before and after (b) was informed by DoD officials in July/August 2010 that it did?

q. Did (b) (6) provide any source documents or other information to (b) 'ghost writer' for use in writing or to anyone else for the purpose of reviewing or editing (b) book? If so, be sure to identify said documents or other information.







DEPARTMENT OF THE ARMY
OFFICE OF THE DIRECTOR OF THE ARMY STAFF,
1000 ARMY PENTAGON
WASHINGTON, DC 20310-1000

DACS-ZD

24 September 2010

MEMORANDUM FOR THE COMMANDER, UNITED STATES ARMY RESERVE
COMMAND

SUBJECT: Direction to Conduct an Informal AR 15-6 Investigation

1. Reference: Memorandum, Deputy Chief of Staff, G2, subject: Recommendation to Conduct an Informal AR 15-6 Investigation, 24 September 2010.

2. I hereby direct you to conduct an informal AR 15-6 investigation into the facts and circumstances surrounding (b) (6) (b) (6) 94th Division (Force Sustainment) from January 2006 to the present; (b) (6)
(b) (6)

In addition, the IO must investigate the actions of officials in the 94th Division (Force Sustainment) with regard to their knowledge of (b) (6) book, titled (b) (6) (b) (6); the conduct of any pre-publication reviews of (b) (6) book by the unit; as well as (b) (6) actions relating to the research, authorship and publication of this book.

3. Should the investigating officer provide findings and or recommendations that are directed at commands or personnel that fall outside of your command and control, please forward those findings and recommendations back to me for appropriate action.

(b) (6)

WILLIAM J. TROY
Lieutenant General, GS
Director of the Army Staff



DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF, G-2
1000 ARMY PENTAGON
WASHINGTON, DC 20310-1000

DAMI-ZA

24 September 2010

MEMORANDUM FOR THE DIRECTOR OF THE ARMY STAFF

SUBJECT: Recommendation to Conduct an Informal AR 15-6 Investigation

1. References:

a. DoD Directive 5230.09, Clearance of DoD Information for Public Release, August 22, 2008.

b. DoD Instruction 5230.29, Security and Policy Review of DoD Information for Public Release, January 8, 2009.

c. Memorandum, Assistant Division Commander, 94th Division (Force Sustainment), subject: Legal and Operational Security Review of (b) (6) (b) (6)

d. Memorandum, Staff Judge Advocate, 94th Division (Force Sustainment), subject: (b) (6)

e. Memorandum, Deputy Chief of Staff, G2, subject: Prepublication Review, 5 August 2010.

f. Letter, Director of the Defense Intelligence Agency, subject: Harm to National Security from Unauthorized Disclosure of Classified Information by (b) (6) (b) (6) 6 August 2010.

g. HQ, United States Army Reserve Command, Report of Proceedings By Investigating Officer, dated 7 February 2007, approved by BG Oscar R. Anderson on 26 Mar 2007.

(b) (6)



(b) (6)



3. (b) (6) has written a book detailing (b) (6) experiences as a (b) (6) (b) (6). In February 2009 (b) (6) entered into a commercial agreement to publish the book, which is titled (b) (6). In January 2010, the deputy commander of the 94th Division (Force Sustainment) conducted a favorable operational security review of (b) (6) book and (b) (6) then notified (b) (6) publisher to proceed with the printing and sale of it. The operational security review, however failed to meet the Department of Defense (DoD) requirements for prepublication review of such a book. DoD Directive 5230.09, Clearance of DoD Information for Public Release requires books that pertain to military matters, national security issues, or subjects of significant concern to the DoD be reviewed at the DoD level prior to release. (See Reference e.)

4. (b) (6) book, which is now available for sale to the public, describes events and activities (b) (6) was involved with or was knowledgeable of pertaining to (b) (6)

(b) (6) DIA officials first became aware of this book in May 2010 and through the assistance of the Army Office of General Counsel, obtained a copy in July 2010 for review. This review determined that the book contained significant classified information, the release of which could reasonably be expected to cause serious damage to national security. (See Reference f) Although the version of the book that is now publically available for purchase no longer contains this information, as it has been "blacked out", approximately 9,515 copies of the initial version were produced by the publisher, and approximately 75 copies were distributed to book reviewers around the country. DoD officials, pursuant to an agreement with the publisher, purchased the 9,515 copies and observed their destruction by the publisher on 20 September 2010. Unfortunately, the publisher has not been able to recover all of the review copies of the original book and several of them have appeared for sale on e-Bay. The classified information in the original will likely be widely disseminated via the internet.

5. (b) (6) activities regarding (b) (6) as well as the activities of (b) (6) chains of command, have resulted in significant personnel and information security incidents/lapses. These incidents span many years and involve at least three separate commands inside and outside of the (b) (6). The most recent activities involving (b) (6) unit have culminated in the release of a significant amount of classified information. All of these matters should be fully investigated to identify the actions and omissions that have led to personnel and information security incidents/lapses and the unauthorized release of

DAMI-CDS

SUBJECT: Recommendation to Conduct an Informal AR 15-6 Investigation

classified information, as well as what corrective steps the Army needs to take to prevent future incidents of this type.

6. Recommend that you appoint or direct the appointment of an investigating officer (IO) to conduct an informal investigation into the facts and circumstances surrounding (b) (6)

addition, the IO should investigate the actions of (b) (6) current chain of command with regard to a pre-publication review of (b) (6) book, as well as (b) (6) actions relating to (b) (6) authorship and publication of this book.

7. The Office of the Deputy Chief of Staff, G-2 point of contact is (b) (6) at (b) (6) e-mail: (b) (6) @us.army.mil. (b) (6) (b) (6)

(b) (6)



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY RESERVE COMMAND
4710 KNOX STREET
FORT BRAGG, NORTH CAROLINA 28310-5010

AFRC-CG

21 May 2012

MEMORANDUM FOR

MG Jeffrey Arnold, (b) (6)

(b) (6)

(b) (6)

(b) (6)

SUBJECT: Release from Appointment as Investigating Officer and Assistant Investigating Officers

1. You hereby are released from your appointment to serve as Investigating Officer and Assistant Investigating Officers pursuant to AR 15-6 in the informal investigation into (b) (6) issues pertaining to (b) (6) 94th Division (Force Sustainment), and issues regarding (b) (6) authoring a book and the 94th Division's review of the same. This release is effective immediately.

2. The investigation of the matter remains pending. Accordingly, no comment should be made regarding your work to date on this matter at this time. (b) (6) is my point of contact for this matter and may be reached at (b) (6) or (b) (6) @usar.army.mil.

(b) (6)

JACK C. STULTZ
Lieutenant General, US Army
Commanding



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY RESERVE COMMAND
4710 KNOX STREET
FORT BRAGG, NORTH CAROLINA 28310-5010

AFRC-CG

21 May 2012

MEMORANDUM FOR BG William F. Duffy, Commander, Military Intelligence
Readiness Command, 8831 John J. Kingman Road, Fort Belvoir, VA 22060-6208

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed to serve as an Investigating Officer (IO) pursuant to Army Regulation (AR) 15-6 in an informal investigation (b) (6). (b) (6)
(b) (6) 94th Division (DIV) (Force Sustainment).
Additionally, you will address (b) (6) actions in authoring a book and the 94th DIV's review of the same. I have relieved all prior investigating officers appointed to this investigation. You will review all previously gathered evidence or findings by previous investigating officers and complete the report of investigation as provided below.

2. This tasking takes priority over your routine duties. It will be your primary responsibility until you submit your completed report of investigation as provided below.

3. No respondent is designated in this investigation. Therefore, you will use the informal procedures set forth in AR 15-6. In the event that you need to gather additional witness statements not previously taken by an investigating officer, all witness statements will be taken under oath and made in writing. Use DA Form 2823, Sworn Statement, to record all sworn statements. If, during the course of your investigation, you believe that a witness may have engaged in any type of criminal misconduct, you will advise that witness of his/her right against self-incrimination and right to counsel. You will consult with the legal advisor identified below before proceeding with interviews of such witnesses. Military suspects will be informed of their rights under Article 31, Uniform Code of Military Justice, and civilian suspects will be advised of their rights under the 5th Amendment to the US Constitution. Use DA Form 3881, Rights Warning Procedure/Waiver Certificate, to accomplish the rights advisement for both military and civilian suspects. You must obtain an acknowledgment and waiver of those rights before conducting any further questioning of a witness you believe has committed a criminal offense.

4. In your report of investigation, you will make specific findings of fact on each of the matters set forth in the enclosed Listing of Issues, along with any other matters you wish me to consider. Use the Report of Proceedings by Investigating Officer/Board of Officers (DA Form 1574) to complete your report of investigation. Do not include classified information in your report. Submit the original and a copy of your report to me, through the US Army Reserve Command (USARC) Office of the Staff Judge

AFRC-CG
SUBJECT: Appointment of Investigating Officer

Advocate (OSJA), no later than 14 days from the date of this appointment. Extensions will not be granted, except for good cause. The Staff Judge Advocate, USARC, is authorized to grant extensions for good cause.

5. Several individuals have been Flagged in accordance with AR 600-8-2 based on prior investigation. Should you determine in the context of your investigation that a Soldier's status has changed from favorable to unfavorable, as defined in AR 600-8-2, Suspension of Favorable Personnel Actions (FLAGS), coordinate with me to initiate a FLAG.

6. (b) (6) USARC OSJA, will serve as your legal advisor. He can be reached at (b) (6) @usar.army.mil should you need advice or assistance.

(b) (6)

(b) (6)

Encl

JACK C. STULTZ
Lieutenant General, US Army
Commanding

REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by LTG Jack Stultz, Commanding General US Army Reserved Command
(Appointing authority)

on 27 September 2010 (Date) (Attach in closure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

SECTION II - SESSIONS

The (investigation) (board) commenced at Fort McPherson, GA at 0800
(Place) (Time)

on 29 September 2010 (Date) (If a formal board met for more than one session, check here ☐. Indicate in an inclosure the time each session began and ended, the place, person's present and absent, and explanation of absence, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

MG Jeffrey L. Arnold (appointed 27 September 2010; relieved 21 May 2012)

(b) (6) (appointed 27 September 2010; relieved 21 May 2012)

(b) (6) (appointed 29 September 2010; relieved 21 May 2012)

BG William Duffy (appointed 21 May 2012)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 1800 on 30 May 2012
(Time) (Date)

and completed findings and recommendations at 1800 on 31 May 2012
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

	YES	NO ^{1/}	NA ^{2/}
¹ Inclosures (para 3-15, AR 15-6)			
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)			
a. The letter of appointment or a summary of oral appointment data?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Copy of notice to respondent, if any? (See item 9, below)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Other correspondence with respondent or counsel, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. All other written communications to or from the appointing authority?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Privacy Act Statements (Certificate, if statement provided orally)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Information as to sessions of a formal board not included on page 1 of this report?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

FOOTNOTES: ^{1/} Explain all negative answers on an attached sheet.

^{2/} Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

		YES	NO ^{1/}	NA ^{2/}
2	Exhibits (para 3-16, AR 15-6)			
	a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)			
4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Was a quorum present at every session of the board (para 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Was each absence of any member properly excused (para 5-2a, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)			
9	Notice to respondents (para 5-5, AR 15-6):			
	a. Is the method and date of delivery to the respondent indicated on each letter of notification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Was the date of delivery at least five working days prior to the first session of the board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Does each letter of notification indicate —			
	(1) the date, hour, and place of the first session of the board concerning that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(2) the matter to be investigated, including specific allegations against the respondent, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(3) the respondent's rights with regard to counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(4) the name and address of each witness expected to be called by the recorder?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(5) the respondent's rights to be present, present evidence, and call witnesses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Was the respondent provided a copy of all unclassified documents in the case file?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
	a. Was he properly notified (para 5-5, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Counsel (para 5-6, AR 15-6):			
	a. Was each respondent represented by counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Name and business address of counsel:			
	(If counsel is a lawyer, check here <input type="checkbox"/>)			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Did each member successfully challenged cease to participate in the proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Examine and object to the introduction of real and documentary evidence, including written statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Call witnesses and otherwise introduce evidence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	e. Testify as a witness?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FOOTNOTES: 1/ Explain all negative answers on an attached sheet. 2/ Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.				

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The (investigating officer) (board) , having carefully considered the evidence, finds:

See Attached report of investigations issues 1-17, additional issue 1 - additional issue 8.

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the (investigating officer) (board) recommends:

see attached.

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

<p>_____ (Recorder)</p>	<p>(b) (6)</p> <p>William F. Duffy, BG, USA (Investigating Officer) (President)</p>
<p>_____ (Member)</p>	<p>_____ (Member)</p>
<p>_____ (Member)</p>	<p>_____ (Member)</p>

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in inclosure _____, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

<p>_____ (Member)</p>	<p>_____ (Member)</p>
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SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

The findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

See attached continuation sheet.

(b) (6)

(b) (6)

Jack C. Stultz, LTC, USA, Commanding

Continuation of Section VII, Action by Appointing Authority, Report of Proceedings by Investigating Officer/Board of Officers, DA Form 1574, assignment, security clearance history and actions in authoring a book of (b) (6)
(b) (6)

I approve the Investigating Officer's (IO) findings, specifically the findings and analysis for report of investigation issues 1-17 in accordance with the list of issues accompanying the memorandum of appointment, dated 27 September 2010, and the findings and analysis of additional issues 1-8 are approved.

I approve the IO's recommendations. Recommendation 1d and recommendation 6 will be forwarded for action as appropriate.

1 June 2012
Date

(b) (6)
(b) (6)
JACK C. STULTZ
Lieutenant General, US Army
Commanding General



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY RESERVE COMMAND
4710 KNOX STREET
FORT BRAGG, NC 28310-5010

REPLY TO
ATTENTION OF:

AFRC-JA

1 June 2012

MEMORANDUM FOR Director of the Army Staff, 1000 Army Pentagon, Washington,
DC 20310-1000

SUBJECT: Conduct of AR 15-6 Informal Investigation

1. Reference memorandum, Director of the Army Staff, DACS-ZD, 24 Sep 10,
subject: Direction to Conduct an Informal AR 15-6 Investigation.

2. Pursuant to the referenced memorandum, I directed an AR 15-6 informal
investigation into the (b) (6) and actions of
(b) (6) in authoring a book. The findings and recommendations of this
investigation are enclosed. On 1 Jun 12, I approved the findings and recommendations
of the investigation. (b) (6)

3. I am forwarding the recommendation regarding (b) (6)
(b) (6)

4. The point of contact is (b) (6) Staff Judge Advocate, at 910-570-8139 or
(b) (6) @us.army.mil.

2 Encls

1. Findings and Recommendations
2. GO Memoranda of Reprimand

(b) (6)
JACK C. STULTZ
Lieutenant General, US Army
Commanding

ISSUE 7: TO WHAT EXTENT WAS THE 94TH DIV CHAIN OF COMMAND AWARE OF (b) (6) BOOK WRITING ACTIVITIES? BE SURE TO ADDRESS THE FOLLOWING:

ISSUE 7A: IDENTIFY THE OFFICIALS OF THE 94TH DIV CHAIN OF COMMAND WHO WERE AWARE OF (b) (6) WRITING ACTIVITIES?

FINDING 7A: The following members of the 94th DIV chain of command were aware of (b) (6) writing activities:¹

- BG Mark W. Corson, the former Commanding General, 94th DIV;
- BG Karen LeDoux, the current Commanding General, 94th DIV; and
- (b) (6), the former Assistant Division Commander, 94th DIV.

ADDITIONAL FINDING 7A: The following additional members of the 94th DIV staff were also aware of (b) (6) writing activities:²

- (b) (6), the Staff Judge Advocate (SJA), 94th DIV;
- (b) (6), the Deputy G3, 94th DIV; and
- (b) (6), the Secretary of the General Staff (SGS), 94th DIV.

ISSUE 7B: WHAT WAS THE UNDERSTANDING OF SUCH OFFICIALS AS TO THE NATURE OF (b) (6) WRITING ACTIVITIES (I.E. WHERE, WHEN, AND HOW (b) (6) WAS RESEARCHING, WRITING, EDITING, AND OBTAINING REVIEWS OF (b) (6) BOOK)?

FINDING 7B: The officials identified in response to Issue 7A, above, had varied degrees of understanding regarding (b) (6) writing activities, as set forth in the following analysis.

ANALYSIS 7B:

BG Corson: BG Corson had four or five informal conversations with (b) (6)

¹ (b) (6), the current Assistant Division Commander for the 94th DIV, was also aware of the fact that (b) (6) had written a book, but (b) (6) was not assigned to the 94th DIV until March 2010. As a result, (b) (6) knowledge of (b) (6) writing activities was extremely limited (Exhibit 117).

² (b) (6) the Deputy Staff Judge Advocate for the 94th DIV, and (b) (6) the Assistant Operations Officer of the 94th Div, were also aware of (b) (6) writing activities; however, their knowledge of (b) (6) writing activities was extremely limited (Exhibits 120 and 123).

regarding (b) (6) book³ (Exhibit 114, p. 11). During those conversations, (b) (6) led BG Corson to believe that (b) (6) was working with officials at the U.S. Army Reserve Command (USARC) to obtain the appropriate clearances because "what (b) (6) was doing was classified"⁴ (Exhibit 114, pp. 9-11). In addition, (b) (6) led BG Corson to believe that (b) (6) writing activities occurred "on (b) (6) civilian employ" (Exhibit 114, p. 10).

BG LeDoux: BG LeDoux knew that (b) (6) and (b) (6) were reviewing (b) (6) manuscript and providing him feedback, but she did not review the manuscript herself, and she did not have any significant discussions with (b) (6) regarding the book until June 2010 (Exhibit 115, pp. 12-17).

(b) (6) (b) (6) knew that (b) (6) was planning to use a ghostwriter to help (b) (6) write (b) (6) book.⁵ In fact, (b) (6) sent (b) (6) an e-mail on 15 March 2008,⁶ in which (b) (6) advised (b) (6) that (b) (6) "had to screen, and make a recommendation, on a ghost writer for (b) (6) book (out of a group of resumes

³ These conversations likely occurred between September 2008 and August 2009 when BG Corson was the Commander of the 94th DIV (Exhibit 114, p. 3). In (b) (6) 22 December 2010 interview, (b) (6) indicated (b) (6) talked to BG Corson "about the book as it was going along, periodically, just about the progress" and that (b) (6) told BG Corson: "I'll be doing the book. I will work with your chain of command to clear the book" (Exhibit 71, p. 144).

⁴ In (b) (6) 22 December 2010 interview, (b) (6) denied that (b) (6) told BG Corson that (b) (6) was working with USARC on security issues regarding (b) (6) book (Exhibit 71, p. 144).

⁵ (b) (6) ghostwriter (b) (6), described the roles of the ghostwriter and the author as follows:

(b) (6) Yeah, I've done it--I've done five book, and my job is to uh, write the authors as they're called, I'm the writer, they're the author, uh, story as the author sees the story, at the same time giving it more of a panache, giving it a flair, building a narrative while not departing from the facts of the story.

(b) (6) Okay. And when you say the author, then what does the author do, and this is just in theory, we'll--we'll talk specifics, but what does the author then--what is their role?

(b) (6) Uh--they're the--they're the expert. Uh--they provide the information. I do, do outside research as much as possible on LexisNexis, uh other interviews because often an author who is not experienced with writing a book doesn't know to provide a lot of the information that I need to build a portrait whether it's, I don't know any kind of details with the physical environment you know. Often, they don't think in those terms so I provide whenever I can. I provide outside information.

(Exhibit 130, p. 3-4).

⁶ This e-mail pre-dates the e-mail discussed in Issue 7C, below, by almost a year (Exhibit 121). As a result, it appears that (b) (6) knew that (b) (6) was planning to write a book at least a year before (b) (6) officially notified BG Corson and other members of the 94th DIV that (b) (6) had accepted a contract to do so.

(b) (6) agent provided) by Friday for a Monday meeting with the prospective publisher”⁷ (Exhibit 84). COL Strickland also knew that (b) (6) was conducting a legal and ethical review of (b) (6) manuscript, and (b) (6) claimed that (b) (6) “conducted a security review at the same time”⁸ (Exhibit 79, pp. 20-22; Exhibit 124).

(b) (6) apparently told (b) (6) that (b) (6) began writing the book in February 2007 (Exhibit 171); however, (b) (6) also told (b) (6) that a ghostwriter did all the research and wrote 95% of the book (Exhibit 86, pp. 16, 39, 43, and 99). Finally, (b) (6) told (b) (6) that all the information in the book was unclassified and had come from open sources (Exhibit 86, pp. 54, 58, 75, 97, 99-100, 108, 113).

(b) (6) believes that (b) (6) wrote (b) (6) book “at home and during his own time,” but (b) (6) did not know when (b) (6) actually wrote the book (Exhibit 118). In addition, (b) (6) did not know where, when, or how (b) (6) researched the book, but (b) (6) generally understood that (b) (6) book was about (b) (6) (Exhibit 118). With respect to obtaining reviews of the book, (b) (6) stated: “I believe (b) (6) had JAG and some sort of a PAO review on it. I cannot recall the exact specifics on that. I also believe the ADC of the 94th reviewed the book” (Exhibit 118).

(b) (6) believes that (b) (6) “wrote (b) (6) book at home from the fall of 2007 through mid 2009,” but (b) (6) did not know where, when, or how (b) (6) researched the book (Exhibit 119). With respect to obtaining reviews of the book, (b) (6) stated: “My understanding is that (b) (6) had his book reviewed by the 94th DIV JAG, (b) (6). I do not have any understanding of what the review entailed” (Exhibit 119).

⁷ (b) (6) advised (b) (6) in an e-mail, dated 27 December 2009, that (b) (6) ghostwriter “performed a great deal of the independent research to show that (b) (6) is no classified information within the pages of the book in that there are original sources of the information in existing unclassified sources...” (Exhibit 146).

⁸ (b) (6) insisted throughout (b) (6) interview that (b) (6) did not conduct a security review of (b) (6) manuscript because (b) (6) did not believe that a security review was required, (b) (6) was not qualified to conduct a security review, and “[t]he responsibility to determine whether or not [there was] classified information in [the] book [fell] solely on (b) (6) shoulders” (Exhibit 86, pp. 53-55, 58-59, 64-68, 82, 91, 95, 104). In addition, (b) (6) asserted that (b) (6) specifically told (b) (6) on 10 December 2009 that (b) (6) was only doing an ethical review of the manuscript (Exhibit 86, p. 76). Nevertheless, (b) (6) admitted that (b) (6) identified 33 “security concerns” during (b) (6) review that (b) (6) brought to (b) (6) attention out of an “abundance of caution,” and because (b) (6) thought (b) (6) had a duty to raise them (Exhibit 86, pp. 58-59, 64-68).

⁹ (b) (6) did not select (b) (6) as (b) (6) ghostwriter until sometime October 2008 (Exhibit 130, p. 5).

¹⁰ In (b) (6) 22 December 2010 interview, (b) (6) repeatedly denied that (b) (6) book contained classified information and stated: “If information is in the open domain and someone picks it up and uses it in the context of a book, I do not believe that’s classified...” (Exhibit 71, pp. 124-126; 130-132; 138-139; 142; 223-225; 316-317). See Issue 11F for a discussion regarding why (b) (6) argument is invalid.

ISSUE 7C: WHAT WAS THE UNDERSTANDING OF SUCH OFFICIALS AS TO THE SUBSTANCE OF THE BOOK (b) (6) WAS WRITING?

FINDING 7C: The officials identified in response to Issue 7A, above, had various understandings regarding the substance of (b) (6) book, as set forth in the following analysis.

ANALYSIS 7C: On 17 March 2009, (b) (6) sent BG (then (b) (6), (b) (6) an e-mail message regarding (b) (6) book,¹¹ which stated, in part:

This is to notify you...of my acceptance of a contract to produce a trade book based on (b) (6)

The working title is: (b) (6). (b) (6) is the publishing house and they have a six month deadline for the book's completion....

The focus will be on my duties while serving as (sic) on the (b) (6) from summer to winter of 2003....

(b) (6) the events and accomplishments described in the narrative will be the focus of the book...and since the narrative is unclassified, we plan to stick to information that is in the narrative and/or already in the media and other unclassified sources.

I will reveal no actual operational locations or sensitive tools, techniques or procedures.

* * * * *

I will be writing the book as a (b) (6) – but according to Army Regulation 530-1, OPSEC, 19 Apr 07, the work must be reviewed prior to publication. Para 2-1.g provides guidance on this issue and stipulates my supervisor and command OPSEC officer review before publications...we do not have an OPSEC officer yet, but I plan to work with (b) (6) on this issue to make sure that my work is properly reviewed prior to publication....

(Exhibit 121).

¹¹ (b) (6) (b) (6) were "courtesy copied" on the e-mail, which was addressed to (b) (6) (Exhibit 121).

BG Corson: BG Corson generally understood that (b) (6) book was about (b) (6) (Exhibit 114, p. 4).

BG LeDoux: BG LeDoux did not review (b) (6) manuscript, and (b) (6) did not have any significant discussions with (b) (6) regarding the book until June 2010 (Exhibit 115, pp. 12-17). Therefore, she was not very familiar with the substance of the book prior to that time.¹² She was, however, aware of the fact that (b) (6) and (b) (6) had identified several items of concern in the manuscript (Exhibit 115, pp. 13-14).

(b) (6) generally understood that (b) (6) book was about (b) (6) (Exhibit 79, pp. 15, 42, 68-69; Exhibit 124).

(b) (6) generally understood that (b) (6) book was "(b) (6) (b) (6), " but (b) (6) considered the book to be a work of fiction because it was written by a ghostwriter and events, locations, and names were allegedly changed¹³ (Exhibit 86, pp. 16, 39, 43, 46, 64, and 99). (b) (6) also believed that (b) (6) and (b) (6) ghostwriter used only unclassified information and open sources to write the book based on (b) (6) conversations with (b) (6) (Exhibit 86, pp. 54, 75, 97, 99-100, 108, 113; Exhibit 171).

(b) (6) has not read (b) (6) book, but (b) (6) told him that the book was "based on (b) (6) experiences (b) (6) (Exhibit 118).

¹² BG LeDoux testified as follows regarding her discussions with (b) (6) after June 2010:

IO [MG ARNOLD]: Did you ever have any discussions with (b) (6) regarding the contents of the book, whether it was classified information or not or any words to that effect?

[BG LE DOUX]: When the allegations came out, it was -- he said it was all open source stuff and I talked to him, I said, well (b) (6) it may be open source but somebody with your background and experience, even though it's open source what that does is it would validate that it is classified.

IO [MG ARNOLD]: When did that conversation take place?

[BG LE DOUX]: That was after the DIA memo came down through DA. I said that's where I think the problem is, is that somebody with your background and experience regardless of whether it's open source it then validates it. The fact that it's out there in the open domain doesn't necessarily mean that it's not classified or classified but when you put it altogether.

(Exhibit 115, p. 25).

¹³ (b) (6) conceded that (b) (6) never told (b) (6) that the book was a work of fiction (Exhibit 86, pp. 43 and 64).

██████████ understood that (b) (6) ██████████ book was a “biographical work” that contained “recollections or memoirs of (b) (6) ██████████ experiences (b) (6) (b) (6) ██████████ Exhibit 119).

ISSUE 7D: HOW AND WHEN DID SUCH OFFICIALS LEARN OF (b) (6) ██████████ WRITING ACTIVITIES?

FINDING 7D: The officials identified in response to Issue 7A, above, learned of (b) (6) ██████████ writing activities at various times, as set forth in the following analysis.¹⁴

ANALYSIS 7D:

BG Corson: (b) (6) ██████████ officially notified BG Corson of ██████████ writing activities in the 17 March 2009 e-mail discussed in response to Issue 7C, above (Exhibit 121). However, BG Corson first became aware of (b) (6) ██████████ intent to “(b) (6) ██████████ (b) (6) ██████████” sometime between when (b) (6) ██████████ met (b) (6) ██████████ in September 2008 and the end of that year¹⁵ (Exhibit 114, pp. 3-4).

BG LeDoux: BG LeDoux heard a passing reference to (b) (6) ██████████ book during BG Corson’s farewell dinner in July 2009¹⁶ (Exhibit 115, p. 12). In addition, BG LeDoux briefly discussed (b) (6) ██████████ book with both (b) (6) ██████████ and (b) (6) ██████████ when they were reviewing the manuscript¹⁷ (Exhibit 115, pp. 12-13).

(b) (6) ██████████ (b) (6) ██████████ officially notified COL Strickland of (b) (6) ██████████ writing activities in the 17 March 2009 e-mail discussed in response to Issue 7C, above (Exhibit 121). However, (b) (6) ██████████ first learned of (b) (6) ██████████ intent to write a book in March 2008 when (b) (6) ██████████ sent (b) (6) ██████████ an e-mail in which (b) (6) ██████████ stated that (b) (6) ██████████ “had to screen,

¹⁴ (b) (6) ██████████ indicated in ██████████ 22 December 2010 interview that ██████████ had “no recollection” of telling anyone in ██████████ 94 DIV about ██████████ book prior to ██████████ e-mail ██████████ sent to BG Corson and ██████████ members of ██████████ staff in March of 2009; however, ██████████ also indicated that ██████████ was “sure that ██████████ would have talked about it in casual conversation in some instances” (Exhibit 71, p. 91). ██████████ was also “sure ██████████ mentioned it to (b) (6) ██████████ that ██████████ was negotiating a book deal” and “told him that ██████████ was going up to New York to meet with a publisher about a book” (Exhibit 71, p. 91).

¹⁵ This timeframe is consistent with (b) (6) ██████████ 11 May 2010 e-mail to BG LeDoux, in which (b) (6) ██████████ indicated that (b) (6) ██████████ had told BG Corson and him that (b) (6) ██████████ was in the process of drafting a manuscript about (b) (6) ██████████ experiences in (b) (6) ██████████ (b) (6) ██████████” (Exhibit 124).

¹⁶ BG LeDoux overheard BG Corson wish (b) (6) ██████████ good luck on (b) (6) ██████████ book (Exhibit 115, p. 12).

¹⁷ Although BG LeDoux did not indicate when these discussions took place, they likely occurred in late 2010 or early 2011 based on the fact that (b) (6) ██████████ completed (b) (6) ██████████ review of (b) (6) ██████████ manuscript on 26 December 2009, and (b) (6) ██████████ completed (b) (6) ██████████ review on 4 January 2010 (Exhibits 151 and 171).

and make a recommendation, on a ghost writer for (b) (6) book (out of a group of resumes (b) (6) agent provided) by Friday for a Monday meeting with the prospective publisher”¹⁸ (Exhibit 84).

(b) (6) officially notified (b) (6) of (b) (6) writing activities in the 17 March 2009 e-mail discussed in response to Issue 7C, above, and that is the first time (b) (6) recalled hearing about (b) (6) writing activities (Exhibit 86, pp. 13-14; Exhibit 121).

(b) (6) told (b) (6) about (b) (6) writing activities in (b) (6) (Exhibit 118).

(b) (6) officially notified (b) (6) of (b) (6) writing activities in the 17 March 2009 e-mail discussed in response to Issue 7c, above. However, (b) (6) indicated in (b) (6) sworn statement that (b) (6) first became aware of (b) (6) writing activities sometime in the fall of 2007¹⁹ through casual conversation with (b) (6) about their deployment experiences (Exhibit 119).

ISSUE 7E: HOW AND WHEN DID SUCH OFFICIALS LEARN OF (b) (6) EFFORTS TO HAVE (b) (6) BOOK COMMERCIALY PUBLISHED?

FINDING 7E: The officials identified in response to issue 7A, above, learned of (b) (6) efforts to have (b) (6) book commercially published at various times, as set forth in the following analysis.

ANALYSIS 7E:

BG Corson: (b) (6) officially notified BG Corson that (b) (6) was the publishing house for (b) (6) book in the 17 March 2009 e-mail discussed in response to Issue 7C, above. However, BG Corson also had four of five informal conversations with (b) (6) regarding the book,²⁰ during which (b) (6) told BG Corson that (b) (6) was “working with...a publishing house to get [his] book written” (Exhibit 114, pp. 10-11).

¹⁸ (b) (6) indicated in (b) (6) 30 November 2010 interview that (b) (6) first learned about (b) (6) writing activities in March 2010, but it appears from the transcript that (b) (6) and the investigating officers were all confused regarding the exact date (b) (6) first learned about (b) (6) writing activities (Exhibit 79, pp. 68-70).

¹⁹ (b) (6) indicated in (b) (6) sworn statement that (b) (6) first became aware of (b) (6) writing activities in the fall of 2007; however, it is likely that (b) (6) meant the fall of 2008 because (b) (6) was not assigned to the 94th Division until 2008, and (b) (6) did not know him prior to that time (Exhibits 45, 48, and 119).

²⁰ These conversations likely occurred between September 2008 and August 2009 when BG Corson was the Commander of the 94th DIV (Exhibit 114, p. 3).

BG LeDoux: (b) (6) told BG LeDoux that (b) (6) book was "coming out" in the June 2010 timeframe. However, as discussed in response to Issue 7D, above, BG LeDoux was already aware that (b) (6) had written a book based on her discussions with (b) (6) and (b) (6) regarding the manuscript (Exhibit 115, pp. 12-14). In addition, (b) (6) sent BG LeDoux an e-mail, dated 17 June 2010, in which (b) (6) made the following comments regarding the book:

As to the book – it is done and in print and is being distributed by the publisher already...the formal release date, as I understand it, is simply when it is put on the shelves of the book stores and is made available on line...

Any "changes" are now, at this point, beyond (sic) my control...it is no longer 'my' book – the moment I provided them the memo required by OPSEC and the legal review, they moved out and it has been on auto-pilot since March.

(Exhibit 125).

(b) (6) officially notified (b) (6) that (b) (6) was the publishing house for (b) (6) book in the 17 March 2009 e-mail discussed in response to Issue 7C, above. However, (b) (6) first learned of (b) (6) efforts to have (b) (6) book commercially published in March 2008 when (b) (6) sent (b) (6) an e-mail in which (b) (6) stated that (b) (6) "had to screen, and make a recommendation, on a ghost writer for (b) (6) book (out of a group of resumes (b) (6) agent provided) by Friday for a Monday meeting with the prospective publisher" (Exhibit 84).

(b) (6) officially notified (b) (6) that (b) (6) was the publishing house for (b) (6) book in the 17 March 2009 e-mail discussed in response to Issue 7C, above (Exhibit 86, pp. 13-14; Exhibit 121).

(b) (6) told (b) (6) that (b) (6) was working with a publisher during the summer of 2010²¹ (Exhibit 118).

(b) (6) officially notified (b) (6) that (b) (6) was the publishing house for (b) (6) book in the 17 March 2009 e-mail discussed in response to Issue 7C, above. However, (b) (6) indicated in (b) (6) sworn statement that (b) (6) told him and (b) (6) that (b) (6) had obtained a publisher for (b) (6) book and was seeking an advance "during an office conversation in either late 2008 or early 2009" (Exhibit 119).

²¹ (b) (6) sworn statement is contrary to (b) (6) sworn statement, in which (b) (6) indicated that (b) (6) told him and (b) (6) that (b) (6) had obtained a publisher for (b) (6) book in either late 2008 or early 2009 (Exhibit 119).

ISSUE 7F: DID SUCH OFFICIALS HAVE ANY INFORMATION ABOUT (b) (6) PROVIDING MANUSCRIPT COPIES OF (b) (6) BOOK TO PUBLISHERS OR AGENTS IN (b) (6) EFFORTS TO GET IT PUBLISHED?

FINDING 7F: (b) (6) provided a copy of (b) (6) manuscript to (b) (6), who is an editor with (b) (6),²² prior to 29 October 2009; however, most of the officials identified in response to Issue 7A, above, had only limited information regarding (b) (6) interaction with (b) (6) or agents in (b) (6) efforts to get (b) (6) manuscript published.

ANALYSIS 7F: On 29 October 2009, (b) (6) sent (b) (6) and (b) (6) ghostwriter, (b) (6), an e-mail, in which (b) (6) indicated that (b) (6) had read the first draft of (b) (6)²⁴ and provided feedback regarding the book (Exhibit 169). On 15 November 2009, (b) (6) provided a copy of this e-mail to (b) (6) and asked (b) (6) whether (b) (6) wanted to “review the final manuscript with the changes to complete (b) (6) classification review,” or whether (b) (6) was “comfortable completing (b) (6) review with the current manuscript” (Exhibit 169).

BG Corson: Except as discussed in response to Issue 7E, above, BG Corson had no information about (b) (6) providing copies of (b) (6) manuscript to publishers or agents in (b) (6) efforts to get it published.

BG LeDoux: Except as discussed in response to Issue 7E, above, BG LeDoux had no information about (b) (6) providing copies of (b) (6) manuscript to publishers or agents in (b) (6) efforts to get it published.

(b) (6) Except as discussed in response to Issue 7E, above, (b) (6) had no information about (b) (6) providing copies of (b) (6) manuscript to publishers or agents in (b) (6) efforts to get it published.

(b) (6) sent (b) (6) the e-mail from (b) (6) on 15 November 2009 (Exhibit 169). Therefore, (b) (6) was aware of the fact that (b) (6) had already provided the first draft of (b) (6) manuscript to (b) (6) publisher as of that date.

(b) (6) did not have any information about (b) (6) providing manuscript copies of (b) (6) book to publishers or agents in (b) (6) efforts to get it published (Exhibit 118).

²² (b) (6) is a division of (b) (6). See (b) (6)

²³ In (b) (6) 22 December 2010 interview, (b) (6) claimed that (b) (6) did not provide a copy of (b) (6) manuscript to (b) (6) publisher until February 2010, after (b) (6) received (b) (6) memorandum; however, the e-mail from (b) (6) clearly shows that (b) (6) provided a copy of (b) (6) manuscript to (b) (6) publisher before the 94 DIV had completed its review (Exhibit 71, pp. 295-296).

²⁴ The working title of (b) (6) book was (b) (6) (Exhibit 121).

(b) (6): Except as discussed in response to Issue 7E, above, (b) (6) did not have any information about (b) (6) providing manuscript copies of (b) (6) book to publishers or agents in (b) (6) efforts to get it published (Exhibit 119).

ISSUE 7G: WHAT GUIDANCE, IF ANY, DID ANY OFFICIALS OF THE 94TH DIV PROVIDE TO (b) (6) REGARDING (b) (6) WRITING ACTIVITIES?

FINDING 7G: (b) (6) received guidance from officials of the 94th DIV, as set forth in the following analysis. In addition, (b) (6) provided guidance to officials of the 94th DIV. Specifically, (b) (6) advised BG (b) (6) (b) (6) (b) (6) that AR 530-1, *Operational Security*, paragraph 2-1g, required (b) (6) supervisor and the unit's OPSEC officer to review (b) (6) book²⁶ (Exhibit 121).

ANALYSIS 7G:

BG Corson: BG Corson talked to (b) (6) regarding the possibility that (b) (6) manuscript contained classified information (Exhibit 114, pp. 9-11). During these conversations, (b) (6) assured BG Corson that (b) (6) was working with personnel at USARC to obtain the appropriate clearances²⁸ (Exhibit 114, pp. 9-11).

BG LeDoux: BG LeDoux did not provide any guidance to (b) (6) regarding (b) (6) writing activities (Exhibit 115, p. 26).

(b) (6) In a memorandum for record (MFR), dated 4 January 2010, which (b) (6) subsequently provided to (b) (6),²⁹ (b) (6) indicated that (b) (6) "found no obvious security or legal issues in the DRAFT manuscript provided for review"³⁰

²⁵ In (b) (6) 22 December 2010 interview, (b) (6) indicated that (b) (6) civilian attorney advised him "to approach (b) (6) chain of command and allow them to determine how to go about clearing the book" (Exhibit 71, pp. 98, 112, 119-120, 126-127, 217). (b) (6) also claimed that (b) (6) followed (b) (6) chain of command's guidance "every step of the way" (Exhibit 71, pp. 113, 119, 127, 129).

²⁶ In (b) (6) 22 December 2010 interview, (b) (6) conceded that (b) (6) brought AR 530-1 to (b) (6) unit's attention (Exhibit 71, p. 112), but (b) (6) failed to mention (b) (6) relevant regulations, such as (b) (6) regulations discussed in Issue 8 that govern (b) (6) pre-publication review process and (b) (6) obligation to safeguard classified and controlled unclassified information.

²⁷ In (b) (6) 22 December 2010 interview, (b) (6) said that BG Corson advised him "[t]o follow the process that (b) (6) was given to clear the book by (b) (6) chain of command" (Exhibit 71, p. 115).

²⁸ If (b) (6) actually claimed that (b) (6) was "working with personnel at USARC," (b) (6) claim would be a gross exaggeration. (b) (6) never personally contacted anyone at USARC, and the only person (b) (6) contacted at USARC was (b) (6) in the USARC Office of the Staff Judge Advocate (Exhibit 86, pp. 25-29).

²⁹ The exact date (b) (6) provided the MFR to (b) (6) is not clear, but (b) (6) testified that (b) (6) received the MFR in January 2010 (Exhibit 71, p. 296).

³⁰ In his 30 November 2010 interview, (b) (6) admitted that (b) (6) did not have the education, training, or experience to determine whether the information in (b) (6) book was classified, or to

(Exhibit 151). (b) (6) then stated:

I interpose no objection on legal or operational security grounds for the publication of (b) (6) book, (b) (6). In my judgment, I find it sufficient for publication. Accept the comments in (b) (6) legal opinion] as guidance in your next step to publication of this manuscript.

(Exhibit 151). In addition, in an e-mail to BG LeDoux, dated 11 May 2010, (b) (6) provided the following summary of the guidance (b) (6) provided:

...I mentioned to (b) (6) that (b) (6) (sic) needed to ensure that all the ethical and legal reviews were completed as well[,] knowing what (b) (6) (b) (6) (b) (6) [b) (6)], that there was no seepage of classified information[,] and that OPSEC was maintained.³²

* * * * *

conduct the required reviews (Exhibit 79, pp. 10, 12-13, 15, 73, 79-81, 89, 101, and 111). In addition, he admitted that he did nothing to verify (b) (6) claim that the information in the book was unclassified, other than to review the links that (b) (6) and (b) (6) ghostwriter provided to the "open sources" (b) (6) allegedly used to write the book (Exhibit 79, pp. 18-20, 42-43, 47-48, 56, 60, 74-75, 77-80).

³¹ In his 30 November 2010 interview, (b) (6) denied that he and (b) (6) "approved" (b) (6) book, but he conceded that the book would not have been published without his MFR and (b) (6) legal review (Exhibit 79, pp. 89-90).

³² In his 6 February 2011 interview, (b) (6) indicated that (b) (6) was the one who approached him regarding the "requirement for a review," and that (b) (6) provided him with "the regulation" (Exhibit 111, pp. 9-10). In addition, he reiterated the fact that he talked to (b) (6) about the need to make sure that the information in the book was "all public knowledge" and did not "compromise operations" (Exhibit 111, p. 26). However, when (b) (6) was asked whether (b) (6) advised (b) (6) to have DIA review the manuscript, (b) (6) said:)

...I--to be honest with you I may have, I may not. I do not remember if I did state something to that effect with him. In regards specifically addressing why are you--why you're not--are you going to address this with DIA? What I did specifically address with (b) (6) was that I am doing this and what we are doing in this process is (b) (6) based on what the regulation says. And I did say to (b) (6) something to the effect that there may be other issues. Now, I have nothing in writing to say that, you know such as an e-mail or anything, but I believe I did say to (b) (6) in a conversation during this window of November, December, January that what I just referred to about (b) (6) that's why--that's--what I am doing is because of that. There may be other issues that--or other wickets using that term.

(Exhibit 111, p. 14-15).

...Upon reviewing the book[,] I provided (b) (6) numerous comments on what I determined to be possible issues and maybe consider[ed] borderline OPSEC....³³

(Exhibit 124).

(b) (6) had conversations with (b) (6) regarding his book during the summer of 2009 (Exhibit 86, pp. 15-16, 18, 52). During at least one of these conversations,³⁴ (b) (6) told (b) (6) (b) (5)

(Exhibit 86, pp. 35-37).

However, (b) (6) did conduct an "ethics review" of the book, and (b) (6) gave (b) (6) a legal opinion, dated 26 December 2009, in which (b) (6) advised (b) (6), (b) (5)

(Exhibit 171).

(b) (6) believes that some guidance was given, but (b) (6) was not aware of the specifics (Exhibit 118).

(b) (6) recalled a conversation in early 2009 "during which (b) (6) stated that a legal review of the manuscript needed to be completed before it could be published," but (b) (6) could not recall the exact date of the conversation (Exhibit 119). In addition, (b) (6) indicated that (b) (6) read "Chapter One" of the manuscript at (b) (6) request and "offered him some frank feedback regarding the manner in which he [was] portrayed (b) (6) (Exhibit 119).

³³ In his 30 November 2010 interview, (b) (6) said that he "sat down with (b) (6) [after (b) (6) completed (b) (6) review of the manuscript] and went over all of [the] issues that (b) (6) had with him in regards to the book as well as reviewing what (b) (6) had done earlier in I believe the November window" (Exhibit 79, p. 72).

³⁴ (b) (6) indicated that this conversation took place during the April 2009 battle assembly (Exhibit 86, p. 37).

(b) (6), (b) (5)

The provision in AR 360-1 that exempted manuscripts written by non-active duty members of the Reserve Components from the review and clearance requirements outlined in the regulation was negated by DoDD 5230.09, paragraph 4f, which specifically requires "non-active duty members of the Reserve Components" to "use the DoD security review process to ensure that information they submit for public release does not compromise national security."

ISSUE 7H: DID (b) (6) RESEARCH, WRITE OR EDIT (b) (6) BOOK WHILE (b) (6) WAS IN MILITARY DUTY STATUS?

FINDING 7H: (b) (6) conducted some of the research, writing, or editing of (b) (6) book while (b) (6) was in military duty status.

ANALYSIS 7H: (b) (6) admitted that (b) (6) was in a military status when (b) (6) was working on (b) (6) book in 2009³⁶ (Exhibit 71, p. 149), and the following witnesses corroborated (b) (6) admission:³⁷

(b) (6) believes he “probably” discussed (b) (6) book with (b) (6) however, he actually met with (b) (6) to discuss (b) (6) concerns regarding the book (b) (6) when (b) (6) was not in a military duty status (Exhibit 79, p. 102-103).

(b) (6) does not believe that (b) (6) researched, wrote, or edited (b) (6) manuscript while (b) (6) was on active duty (Exhibit 86, pp. 20, 35, and 94-95). However, (b) (6) did discuss the book with (b) (6) on the telephone and at the (b) (6) while (b) (6) was in a military duty status³⁸ (Exhibit 86, pp. 20, 37-42, 108; Exhibit 150, p. 73).

³⁶ (b) (6) testified as follows regarding this issue:

Q [MG ARNOLD]: Were you in your military status at any time that you were doing any of the writing, editing, researching, or take any actions with regard to the publication of the book?

A (b) (6) Yeah. (b) (6) and I would work on them in the evenings. Yes, sir.

Q [MG ARNOLD]: What, (b) (6)

A (b) (6) I was--I (b) (6) first year of the organization of the 94th Division's standup at Fort Lee.

(Exhibit 71, p. 149).

³⁷ Several witnesses believed that (b) (6) wrote (b) (6) book “on (b) (6) own time” based on their conversations with (b) (6), to include BG Corson (Exhibit 114, p. 10), (b) (6) (Exhibit 118), and (b) (6) (Exhibit 119). In addition, (b) (6) testified that (b) (6) never met with (b) (6) when (b) (6) was in uniform (Exhibit 130, pp. 6, 33). However, none of these witnesses had actual knowledge regarding whether (b) (6) researched, wrote, or edited (b) (6) book while (b) (6) was in a military duty status.

³⁸ (b) (6) testified that (b) (6) “more than likely... (b) (6) when he called to talk about the book because (b) (6) (b) (6) (Exhibit 86, p. 20). (b) (6) also testified that discussions regarding the book were (b) (6) (b) (6) (Exhibit 86 p. 20), and that at least one such discussion occurred during (b) (6) (Exhibit 86, pp. 37).

ISSUE 7I: DID (b) (6) RESEARCH, WRITE OR EDIT (b) (6) BOOK USING GOVERNMENT RESOURCES OF ANY KIND, TO INCLUDE A GOVERNMENT INFORMATION SYSTEM?

FINDING 7I: (b) (6) did not research, write or edit (b) (6) book using government resources.³⁹

BG Corson: (b) (6) led BG Corson to believe that (b) (6) researched, wrote, and edited (b) (6) book "on (b) (6) civilian employ" (Exhibit 114, p. 10).

(b) (6): (b) (6) did not specifically address this issue, but it reasonable to assume that (b) (6) did not believe that (b) (6) researched, wrote, or edited (b) (6) book using government resources since (b) (6), (b) (5) (Exhibit 86; Exhibit 171).

(b) (6) had no knowledge of (b) (6) using government resources to research, write or edit (b) (6) book because (b) (6) never saw (b) (6) work on (b) (6) book while in a duty status at (b) (6) (Exhibit 118).

(b) (6) had no knowledge of (b) (6) using government resources to research, write or edit (b) (6) book (Exhibit 119).

ISSUE 7J: DID ANY OFFICIALS OF THE 94TH DIV VIEW OR READ ANY PORTIONS OF (b) (6) BOOK/MANUSCRIPT PRIOR TO (b) (6) SUBMISSION OF IT FOR A PRE-PUBLICATION REVIEW? IF SO, FOR WHAT PURPOSE?

FINDING 7J: Other than (b) (6), no officials of the 94th DIV viewed or read any portion of (b) (6) manuscript prior to (b) (6) submission of it to (b) (6) and (b) (6) for a pre-publication review.

ANALYSIS 7J:

BG Corson: BG Corson remembers seeing the cover art for the book, but he does not believe he ever received a copy of the book, and he has not read it (Exhibit 114, p. 5).

BG LeDoux: BG LeDoux did not read (b) (6) manuscript (Exhibit 115, p. 13).

(b) (6) indicated that (b) (6) read (b) (6) manuscript prior to providing his review of it (Exhibit 79, pp. 12 and 43).

³⁹ (b) (6) was not specifically asked whether (b) (6) used government resources to research, write, or edit (b) (6) book during his 22 December 2010 interview.

⁴⁰ In (b) (6) 22 December 2010 interview, (b) (6) indicated that (b) (6) did not recall giving a copy of the draft manuscript to anyone in the 94th DIV or the 80th TC, other than (b) (6) and (b) (6) (Exhibit 71, pp. 111-112).

(b) (6) indicated that (b) (6) read (b) (6) manuscript prior to providing (b) (6) review of it (Exhibit 86, pp. 51 and 55).

(b) (6) saw a copy of (b) (6) book, but (b) (6) did not read it (Exhibit 118).

(b) (6) read a portion of the manuscript that (b) (6) called "Chapter One" at (b) (6) request, but (b) (6) could not recall when (b) (6) did so (Exhibit 119). (b) (6) later offered (b) (6) "frank feedback regarding the manner in which (b) (6) was] portrayed as a (b) (6) Exhibit 119).

ISSUE 8: WHAT RULES GOVERN THE PRE-PUBLICATION REVIEW OF SPEECHES, BOOKS, AND OTHER WRITINGS AUTHORED BY SOLDIERS?

ISSUE 8A: IDENTIFY ALL DEPARTMENT OF DEFENSE (DOD) AND DEPARTMENT OF THE ARMY DIRECTIVES, REGULATIONS, AND POLICIES PERTAINING TO SUCH REVIEW.

FINDING 8A: The following DOD and Army directives, regulations, and policies pertain to the pre-publication review of speeches, books, and other writings authored by Soldiers:

1. Public Affairs/Public Release:

A. Department of Defense Directive 5230.09, *Clearance of DoD Information for Public Release*, 22 August 2008;

B. Department of Defense Instruction 5230.29, *Security and Policy Review of DoD Information for Public Release*, 8 January 2009; and

C. Army Regulation 360-1, *The Army Public Affairs Program*, 15 September 2000 (revised 25 May 2011).

2. Standards of Ethical Conduct:

A. 5 C.F.R. Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*, March 2011;

B. DoD 5500.7-R, *Joint Ethics Regulation (JER)*, including Changes 1-6; and

C. DoDD 5500.07, *Standards of Conduct*, 29 November 2007.

3. Operations Security (OPSEC):

A. Chairman of the Joint Chiefs of Staff Instruction 3213.01C, *Joint Operations Security*, 17 July 2008;

B. Joint Publication 3-13.3, *Operations Security*, 29 June 2006;

C. Department of Defense Manual 5205.02-M, *DoD Operations Security (OPSEC) Program Manual*, 3 November 2008;

D. Army Regulation 530-1, *Operations Security (OPSEC)*, 19 April 2007.

4. Information Security/Classification Review/Nondisclosure:

A. Executive Order (EO) 12958, *Classified National Security Information*, 17 April 1995 (superseded by EO 13526, *Classified National Security Information*, 29 December 2009);

B. Department of Defense 5200.1-R, DoD Information Security Program, 14 January 1997;

C. Undersecretary of Defense (Intelligence) Directive-Type Memorandum 04-010, Subject: Interim Information Security Guidance, 16 April 2004;

D. Defense Intelligence Agency Instruction (DIAI) 5400.300 (U), Prepublication Review of Information Prepared for Public Release, 18 August 2006).

E. Army Regulation 380-5, *Department of the Army Information Security Program*, 29 September 2000.

ISSUE 8B: SET FORTH THE RELEVANT PORTIONS OF SUCH DIRECTIVES, REGULATIONS, AND POLICIES.

FINDING 8B: The relevant portions of the above-referenced authorities and the manner in which they interrelate are described in Issue 8C, below. A copy of the relevant portions of each authority discussed is appended to this investigation report as Exhibit 327.

ISSUE 8C: DESCRIBE HOW SUCH A REVIEW MUST TAKE PLACE. SPECIFICALLY, IDENTIFY WHO MUST REVIEW THE DRAFT WRITING, EXPLAIN THE NATURE OF EACH REVIEWER'S EXAMINATION, AND IDENTIFY WHO MUST FINALLY APPROVE THE SPEECH, BOOK, OR OTHER WRITING PRIOR TO PUBLICATION OR PUBLIC RELEASE.

FINDING 8C: Pre-publication review of official DoD information is primarily controlled by DoD Directive (DoDD) 5230.09¹ and DoD Instruction (DoDI) 5230.29.² These authorities direct that "[a]ny *official DoD information* intended for public release that pertains to military matters, national security issues, or subjects of significant concern to the [DoD] shall be reviewed for clearance prior to release."³ Official DoD information includes "[a]ll information . . . acquired by DoD employees as part of their official duties

¹ DoD Directive (DoDD) 5230.09, *Clearance of DoD Information for Public Release* (22 Aug 08).

² DoD Instruction (DoDI) 5230.29, *Security and Policy Review of DoD Information for Public Release* (8 Jan 09).

³ DoDD 5230.09, ¶ 4b; DoDI 5230.29 ¶ 4.a (emphasis added).

or because of their official status.”⁴

For certain types of official DoD information, release authority is expressly withheld to DoD level. These withheld topics are broken down into two categories: (a) “critical topics,” and (b) information “prepared by or for DoD personnel.”⁵

Critical Topics: DoDI 5230.29 specifies several “critical topics” for which release authority is withheld to DoD level. This category includes any official DoD information which “addresses . . . or affects the operations security of . . . [m]ilitary operations and significant exercises of national or international significance [or] intelligence.”⁶

Information Prepared By or For DoD Personnel: “DoD personnel” includes reservists who are (a) on active duty under Title 10 orders, or (b) “performing official duties, including while on inactive duty for training or while earning retirement points . . . or while engaged in any activity related to the performance of a Federal duty or function.”⁷ The DoD information in question must also: (a) be (or have the potential to become) an item of national or international interest;⁸ (b) affect national security policy or foreign relations;⁹ and/or (c) address or affect the OPSEC of “intelligence” and/or “military operations . . . of national or international significance.”¹⁰

A general pre-publication review obligation also extends to certain non-DoD personnel. “Retired personnel, former DoD employees, and non-active duty members of the Reserve Components *shall* use the DoD security review process to ensure that information they submit for public release does not compromise national security.”¹¹ Also, even works prepared in a wholly private capacity must receive pre-publication review if they contain official DoD information implicating either “critical topics” or “information prepared by/for DoD personnel.”¹²

⁴ The full definition of “official DoD information” is: “All information that is in the custody and control of the [DoD], relates to information in the custody and control of the Department, or was acquired by DoD employees as part of their official duties or because of their official status within the Department.” DoDD 5230.09, Glossary.

⁵ DoDI 5230.29, Encl 3, ¶ 1.a-b.

⁶ DoDI 5230.29, Encl 3, ¶ 1.b.

⁷ DoDI 5230.29, Encl 3, ¶ 1.

⁸ DoDI 5230.29, Encl 3, ¶ 1.a(2).

⁹ DoDI 5230.29, Encl 3, ¶ 1.a(3).

¹⁰ DoDI 5230.29, Encl 3, ¶¶ 1.a-b.

¹¹ DoDD 5230.09, ¶ 4.g (emphasis added).

¹² DoDD 5230.09, ¶4.g.

Where release authority is withheld to DoD, the affected military department must conduct a preliminary internal review.

All information submitted for [DoD] review must first be coordinated within the originating DoD Component to ensure that it reflects the organization's policy position; does not contain classified, controlled unclassified, or critical information requiring withholding; and is reviewed for operations security . . .¹³

The matter must then be forwarded to the Service Component Head (or his authorized representative), who must approve release before forwarding the matter to DoD for final action.¹⁴ The authorized representative within the Department of the Army is the Chief of Public Affairs.¹⁵ Assuming release is recommended by the Service Component, the matter is forwarded to the DoD Office of Security Review (OSR) for review and clearance.¹⁶

When release authority is *not* withheld to DoD, it is expressly delegated to the DoD Component Head.¹⁷ Responsibility for review "may be delegated to the lowest level competent to evaluate the content and implications of public release of the information."¹⁸ This must include, as a minimum, both an OPSEC and information security review.¹⁹

Army Implementation / Public Affairs

The primary Department of the Army regulation implementing pre-publication review is (AR) 360-1, *The Army Public Affairs Program*.²⁰ AR 360-1 (2000) notes that "[DoD] policy requires any official information intended for public release that pertains to military matters, national security issues, or subjects of significant concern to the DoD

¹³ DoDI 5230.29, Encl 3, ¶ 2.a(3).

¹⁴ DoDI 5230.29, Encl 3, ¶ 2.a(2).

¹⁵ Army Regulation (AR) 360-1, *The Army Public Affairs Program* (15 Sep 2000), ¶ 5-3. Note that AR 360-1 was revised effective 25 May 2011. Unless otherwise specified, all citations to AR 360-1 herein shall be to the 15 September 2000 version (abbreviated AR 360-1 (2000)), as it was in effect at the time of the events under investigation.

¹⁶ DoDI 5230.29, Encl 2, ¶ 4.b.

¹⁷ DoDI 5230.29, Encl 2, ¶ 4.d ("The Heads of the DoD Components shall . . . [e]xercise clearance authority" for information not subject to review by OSR).

¹⁸ DoDI 5230.29, Encl 2, ¶ 4.d.

¹⁹ DoDI 5230.29, Encl 2, ¶ 4.d.

²⁰ Note that AR 360-1 was revised in 2011, but the 2000 version was in effect at the time of the events under investigation; accordingly (unless otherwise noted), all citations to AR 360-1 herein are to the 2000 version (abbreviated as "AR 360-1 (2000).")

be cleared by appropriate security review and PA offices prior to release.”²¹ The regulation does not specify detailed procedures for PA pre-publication review. However, presumably it would include a determination that the various requirements specified in the regulation have been met, and a responsibility to ensure the matter is forwarded to an appropriate release authority when local approval is not authorized.

AR 360-1 (2000) expressly recites those topics whose release is withheld to HQDA and/or OSD, including the DoD-specified categories discussed above.²² AR 360-1 (2000) also requires that pre-publication examination include an information security review,²³ OPSEC review,²⁴ and policy review.²⁵ AR 360-1 (2000) also notes several specific subjects which require external coordination (including a requirement to coordinate with INSCOM regarding any potential release of military intelligence and security-related information).²⁶ Ultimate responsibility for these requirements lies with the affected commander, whose primary action officer and advisor regarding their fulfillment is the public affairs officer (PAO).²⁷

AR 360-1 (2000) also contains specific guidance regarding pre-release review of manuscripts. Two parts of this guidance are particularly noteworthy, in that they plainly conflict with DoDD 5230.09 and DoDI 5230.29. Paragraph 6-6 of AR 360-1 (2000) states, in part, that “[m]anuscripts . . . by . . . members of the Reserve components not on active duty *are not subject to review and clearance*.”²⁸ As discussed above, several provisions of DoDD 5230.09 and DoDI 5230.29 impose pre-publication release requirements that apply to reservists not on active duty.²⁹ AR 360-1 (2000) para 6-6 also provides that

²¹ AR 360-1 (2000), ¶ 5-1.

²² AR 360-1 (2000), ¶ 5-3.a-b.

²³ AR 360-1 (2000), ¶¶ 2-3.d(5), (10); 5-1; 5-4. AR 360-1 (2000) ¶ 5-4 indirectly states this requirement in its injunction that “[s]afeguarded information will not be . . . made available to unauthorized individuals.” “Safeguarded information” is defined elsewhere in the regulation to include “[d]efense information requiring protection under . . . AR 380-5” – i.e., classified information. AR 360-1 (2000)

²⁴ AR 360-1 (2000), ¶ 5-4.a.

²⁵ AR 360-1 (2000), ¶ 5-4.b.

²⁶ AR 360-1 (2000), ¶ 5-3.c(5).

²⁷ AR 360-1 (2000), ¶¶ 1-5; 2-4.a, c. Among the commander’s specified responsibilities are “not releas[ing] information that would adversely affect national security” and “[p]rotect[ing] information classified in the interest of national security under AR 380-5.” AR 360-1 (2000), ¶ 2-3.d(5), (10).

²⁸ AR 360-1 (2000), ¶ 6-6.d (emphasis added).

²⁹ The clearest of these is DoDD 5230.09’s sweeping injunction that “*non-active duty members of the Reserve Components shall use the DoD security review process* to ensure information they submit for public release does not compromise national security.” DoDD ¶ 4.f (emphasis added). Other security review requirements that would apply to reservists include (a) the general policy in DoDD 5230.09 stating that “[a]ny official DoD information intended for public release that pertains to military matters, national security issues, or subjects of significant concern to the DoD shall be reviewed for clearance prior to

Unofficial materials do not require clearance. These include materials produced on personal time, using personal equipment and open sources. Unofficial letters to the editor, book or similar reviews, and works of fiction (to include those based on real events) do not need clearance.³⁰

DoDD 5230.09 clearly states that even materials prepared in an unofficial capacity must be submitted to OSR for pre-publication review, if they contain official DoD information falling within the categories described in DoDI 5230.29.³¹ The provisions of AR 360-1 (2000) purporting to exempt Reservists and unofficial materials from review were invalid to the extent that they conflicted with DoDD 5230.09 and DoDI 5230.29.³² This inconsistency should have been apparent with even cursory research, considering that DoDD 5230.09 is expressly referenced in AR 360-1 (2000) not less than three times.³³ In particular, the very first paragraph of the chapter titled “Release of Information” states: “See DODD 5230.9 for additional guidance.”³⁴

As noted above, DoD policy and AR 360-1 (2000) require pre-publication review of documents containing official DoD information, which must include (as a minimum) information security review, OPSEC review, and policy review.³⁵ Inherent in this requirement is an obligation to coordinate with other organizations whose input is needed to reasonably determine whether release of the information presents any risk – in particular the organization which originally generated the information being reviewed. This is apparent from DoDI 5230.29’s requirement that “[a]ll information submitted for review to OSR must first be coordinated within the *originating* DoD component” to ensure security, OPSEC and policy concerns are addressed.³⁶ Note also DoDI 5230.29’s requirement that internal pre-publication review authority be delegated no further than “the lowest level *competent to evaluate the content and implications of public release*”³⁷ – which strongly implies that only those organizations able to assess

release” (DoDD 5230.09 ¶ 4.b); (b) the requirement for DoD-level pre-publication review of a manuscript containing official DoD information regarding “critical topics,” regardless of the military status of the author (DoDI 5230.29, Encl 3, ¶ 1.b); and (c) the required DoD review of certain types of information prepared by “DoD personnel,” which includes reservists on inactive duty for training (DoDI 5230.29, Encl 3, ¶ 1.a).

³⁰ AR 360-1 (2000), ¶ 6-6.c.

³¹ DoDD 5230.09, ¶ 4.g.

³² These inconsistencies were resolved in the 25 May 2011 revision of AR 360-1.

³³ AR 360-1 (2000), ¶¶ 5-1 and 6-1, and in the Glossary.

³⁴ AR 360-1 (2000), ¶ 5-1.

³⁵ DoDI 5230.29, Encl 2, ¶ 4.d; Encl 3, ¶ 2.a(3); AR 360-1 (2000), ¶¶ 2-3.d(5), (10); 5-4; AR 380-5, ¶ 1-6.b; AR 530-1, ¶ 2-1.g.

³⁶ DoDI 5230.29 Encl 3, ¶ 2.a(3) (emphasis added).

³⁷ DoDI 5230.29 Encl 2, ¶ 4.d (emphasis added).

the significance of sensitive information are able to adequately perform the required pre-publication review. These individual reviews – information security, OPSEC, policy and inter-organizational – will be discussed in further detail below.

Information Security Review

Within the Army, information security reviews are controlled by Army Regulation (AR) 380-5, which controls the safeguarding of classified and controlled unclassified information.³⁸ Under AR 380-5, ultimate responsibility for ensuring safeguarding of classified and sensitive information within each DA organization lies with its commander.³⁹ “The commander will . . . initiate and supervise measures necessary to ensure continual control of classified and sensitive information and materials.”⁴⁰ Responsibility for carrying out such reviews lies with the Command Security Manager (CSM), who must “ensure proposed public releases on classified and sensitive programs be reviewed to preclude the release of classified information or other sensitive unclassified information and materials.”⁴¹ Responsibility for preventing mishandling of classified and sensitive information also lies with the individual having access, and his or her supervisor.⁴² “All DA personnel, regardless of rank, grade, title, or position, have a personal, individual, and official responsibility to safeguard information related to national security that they have access to.”⁴³ AR 380-5 does not lay out specific requirements for a pre-publication review, but implicit in the above-described duties is the requirement for a diligent review of the materials proposed for release by qualified personnel to determine whether they contain any classified or otherwise sensitive information. Assuming information in the document is classified, that status can only be properly assessed by the original classification authority (OCA) or a duly appointed declassification authority.⁴⁴ If the document at issue contains any classified information, it must be immediately safeguarded, and in the event of possible mishandling, an appropriate inquiry initiated.⁴⁵

³⁸ AR 380-5, ¶ 1-1.

³⁹ AR 380-5, ¶ 1-6.b.

⁴⁰ AR 380-5, ¶ 1-6.b.

⁴¹ AR 380-5, ¶ 1-7.

⁴² AR 380-5, ¶¶ 1-8.f, 1-9.

⁴³ AR 380-5, ¶ 1-9.

⁴⁴ AR 380-5, ¶¶ 3-1, 3-7. Information can also become automatically declassified after an amount of time specified by the OCA. EO 13526, ¶ 1.5. This time is normally no more than 25 years. EO 13526, ¶ 1.5(b). If the OCA does not specify a time period for automatic declassification, a default time of 10 years applies. EO 13526, ¶ 1.5(b).

⁴⁵ AR 380-5, ¶ 10-2, 10-3.

OPSEC Review

Both DoD and Army policy require OPSEC review as part of pre-publication review.⁴⁶ AR 530-1, the OPSEC regulation, requires “[a]ll Department of the Army . . . personnel” to “[p]revent disclosure of critical and sensitive information in any public domain.”⁴⁷ This includes a responsibility to “not publicly reference . . . or publish critical or sensitive information that has already been compromised as this provides further unnecessary exposure of the compromised information and may serve to validate it.”⁴⁸ As part of this duty, Army personnel are required to “[k]now who their [servicing] OPSEC Officer is and contact them for questions, concerns or recommendations for OPSEC-related topics,” and also to “[c]onsult with their immediate supervisor and their OPSEC Officer for an OPSEC review prior to publishing or posting information in a public forum.”⁴⁹ As part of this review, “[s]upervisors will advise personnel to ensure that sensitive and critical information is not disclosed.”⁵⁰ Commanders are responsible for establishing and supervising all OPSEC processes in their units, to include pre-publication review, and are required to appoint OPSEC officers to carry them out.⁵¹ Only persons who have received requisite training may serve as OPSEC Officers.⁵² OPSEC officers are required to conduct a review of any products “related to U.S. Government or military operations, and other supporting programs, prior to release in the public domain.”⁵³ This review is normally carried out in conjunction with the public affairs review.⁵⁴ The purpose of OPSEC pre-publication review is to ensure that information to be released does not contain critical information or sensitive information.⁵⁵ “Critical information” is information important to the successful achievement of U.S. objectives and missions, or which may be of use to an adversary of the United States.⁵⁶ It may be, but is not necessarily, classified.⁵⁷ It is typically specific

⁴⁶ DoDI 5230.29, Encl 2 ¶ 4.d, Encl 3 ¶ 2.a(3); AR 530-1 ¶ 2-1.g.

⁴⁷ AR 530-1, ¶ 2-1.c.

⁴⁸ AR 530-1, ¶ 2-1.c(2).

⁴⁹ AR 530-1, ¶ 2-1.g.

⁵⁰ AR 530-1, ¶ 2-1.g(2).

⁵¹ AR 530-1, ¶¶ 1-8; 2-2.a(1); 2.2.c; 2-3.a.(1).

⁵² AR 530-1, ¶¶ 2-3.a(2), 4-2.b.

⁵³ AR 530-1, ¶ 5-1.

⁵⁴ AR 530-1, ¶ 5-1.

⁵⁵ AR 530-1 ¶ 5-1.

⁵⁶ AR 530-1, ¶ 1-5.b.

⁵⁷ AR 530-1, ¶ 1-5.b(4).

to a unit or organization.⁵⁸ Among the specifically enumerated examples of critical information provided in AR 530-1 is “Intelligence.”⁵⁹ “Sensitive information” essentially refers to what is now broadly referred to as “controlled unclassified information.”⁶⁰

Inter-Organizational Review / Coordination

As noted above, DoD and Army pre-publication policy require security, OPSEC and policy reviews.⁶¹ Therefore, a policy, security and OPSEC review generally cannot be carried out by an organization if the information at issue did not originate within that organization. Information is initially classified by an Original Classification Authority, who determines and documents the corresponding justification at the time of classification.⁶² The classified status of the information is subsequently conveyed by appropriate markings.⁶³ During pre-publication review of unmarked, possibly classified information, the potential sensitivity of information will often not be apparent outside the organization from which the information originated. Similarly, the localized OPSEC concerns of a command or organization cannot be determined by review authorities at an entirely different organization and/or location. Finally, it is equally impossible for a reviewing organization to divine the policy position of an entirely different organization with regard to a particular item of information. Accordingly, conducting an adequate pre-publication review will frequently require coordination outside the organization where the author-Soldier is presently assigned. This is recognized in AR 360-1 (2000) by expressly requiring external coordination in several specified instances, to include pre-publication review by INSCOM of all intelligence or security-related information.⁶⁴

⁵⁸ AR 530-1, ¶ 1-5.b(7) (noting that critical information is typically recorded in a Critical Information List, which is specific to a unit or organization).

⁵⁹ AR 530-1, ¶ C-10.

⁶⁰ DoDI 5200.01, DoD Information Security Program and Protection of Sensitive Compartmented Information (9 Oct 2008), Glossary; AR 530-1 ¶ 1-5.c.

⁶¹ DoDI 5230.29, Encl 2, ¶ 4.d; Encl 3, ¶ 2.a(3); AR 360-1 (2000), ¶¶ 2-3.d(5), (10); 5-4; AR 380-5, ¶ 1-6.b; AR 530-1, ¶ 2-1.g.

⁶² AR 380-5, Chapter 2.

⁶³ AR 380-5, Chapter 4.

⁶⁴ AR 360-1 (2000), ¶ 5-3.c(5). See also AR 380-5 para 3-4.a, regarding the declassification of “other than Army” information (“Information classified by other U.S. Executive Branch agencies . . . *will be referred to the originating agency*,” AR 380-5, ¶ 3-4.a (emphasis added)); and AR 380-5 para 6-8 regarding access to classified by non-Executive branch personnel (“Classified information can be made available to individuals . . . outside the Executive Branch provided that such [access] is necessary . . . and that such release is not prohibited *by the originating department or agency*,” AR 380-5, ¶ 6-8 (emphasis added)). Determining whether to publicly release potentially classified information is clearly analogous to a decision to declassify and/or downgrade classification of such information, or to allow access by non-Executive Branch personnel.

Note also DoDI 5230.29's requirement that "[a]ll information submitted for review to OSR must first be coordinated within the *originating DoD component*" to ensure security, OPSEC and policy concerns are addressed;⁶⁵ and its direction that internal pre-publication review authority be delegated no further than "the lowest level competent to evaluate the content and implications of public release."⁶⁶

The information for which pre-publication review was being sought in this case was a narrative concerning (b) (6) (b) (6)

Accordingly, an adequate organizational assessment of the information security, OPSEC and policy implications of its release would have necessitated coordination with DIA.

(b) (6)

(b) (6)

⁶⁵ DoDI 5230.29 Encl 3, ¶ 2.a(3) (emphasis added).

⁶⁶ DoDI 5230.29 Encl 2, ¶ 4.d (emphasis added).

⁶⁷ See Issue 1 Findings and Analysis; (b) (6), pp. 102-110; (b) (6), pp. 5-6; (b) (6), pp. 6-7.

(b) (6)

⁶⁹ Since 1991, the standard agreement (b) (6) signed regarding access to TOP SECRET / Secure Compartmented Information (SCI) is the DD Form 1847-1. (DD Form 1847-1, *Sensitive Compartmented Information Nondisclosure Statement*, Dec 1991). (b) (6)

That form includes the following language:

I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing . . . including a work of fiction . . . that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. . . . I agree to make any required submissions prior to discussing the [material] with, or showing it to, anyone who is not authorized to have access to SCI.

(DD Form 1847-1, § A, ¶ 4 (emphasis added). (b) (6)

⁷⁰ Note here the critical distinction between a *determination of eligibility* to be entrusted with SCI, versus the actual *granting of access* to such information. A *determination of eligibility* occurs when an authority empowered to grant personnel security clearances finds that an individual is sufficiently trustworthy to be provided with information classified at a certain level. (See DoD 5200.2-R, *DoD Personnel Security Program*, ¶¶ DL1.1.19, DL1.1.21.) Saying that a person has been "determined eligible" to access

(b) (6)

(b) (6)

. Upon receiving such materials for review, DIA CP-P conducts the required security and policy review, to include any external coordination required.⁷² DIA CP-P then either makes the release determination at its level, or (in the case of subjects withheld for DoD approval) forwards the matter to OSR.⁷³

Government Ethics

Finally, in addition to the above-discussed reviews, a government ethics review was required.⁷⁴ DoD employees have an obligation under the JER to be familiar with

classified information is essentially the same as saying that person has been “granted a security clearance.” *Granting of access* occurs when an agency or department provides a person *already determined to be eligible* (i.e., granted a clearance) with actual “ability and opportunity to obtain knowledge of classified information.” (DoD 5200.2-R, ¶ DL1.1.1 (emphasis added).) (b) (6)

(b) (6)

⁷¹ Defense Intelligence Agency Instruction (DIAI) 5400.300 (U), *Prepublication Review of Information Prepared for Public Release*, ¶ 5.1 (18 August 2006).

⁷² DIAI 5400.300, ¶¶ 6.2.5-6.

⁷³ DIAI 5400.300, ¶¶ 6.2.7.

⁷⁴ Government ethics standards apply to government employees. Joint Ethics Regulation (JER), DoD 5500.7-R, ¶ 1-211. (Note that the JER was revised effective November 17, 2011. Unless otherwise specified, all citations to the JER herein shall be to the previous version, Change 6, as it was in effect at the time of the events under investigation. Change 6 language remains in place in the current version, crossed out with a red line.) For purposes of this analysis, (b) (6) generally fit within the CFR and JER definition of “special Government employee” – i.e., an individual employed by the Government “who is retained, designated, appointed or employed to perform . . . for not to exceed 130 during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.” JER ¶ 1-232; 5 CFR § 2635.102(l); 18 USC § 202(a). (b) (6) can be considered regular government employees for ethics purposes if they exceed the 130 duty-day limit described above; if they are called on to Title 10 active duty; if they are placed in certain other statuses for certain amounts of time; or if they undertake certain actions. JER ¶ 1-211; 18 U.S.C. § 202(a). Among the triggers of regular employee status: any time the (b) (6) member “uses his (b) (6) . . . title or position, or any authority derived therefrom.” JER ¶ 1-211.e. The government ethics authorities relevant to the present matter apply equally to both regular and special employees. Those authorities are (a) the 5 CFR § 2635 prohibition against receiving non-Federal compensation for certain writings, and (b) the JER provisions regarding the referencing of official title or position in non-official writings. 5 CFR § 2635.807; JER ¶¶ 2-207, 2-304, 3-307. 5 CFR § 2635.807 expressly applies to special Government

their ethical obligations and to seek guidance from an ethics counselor or other qualified advisor when appropriate.⁷⁵ Primary responsibility for seeking and conducting a government ethics review accordingly lies with the DoD employee and (b) ethics counselor – though there is obviously a command responsibility to refer an employee to an ethics counselor in appropriate circumstances.⁷⁶

There are several ethical provisions relating to publication of written works by DoD employees. Those relevant to this inquiry are (a) the prohibition of compensation for writings using non-public information, and (b) the requirement to include a disclaimer in written works wherein one's official position or title are referenced.⁷⁷

Prohibition on Compensation. DoD employees are restricted from accepting compensation from a non-Federal source for written works that draw substantially on nonpublic information.⁷⁸ Nonpublic information is information that the employee gains by reason of Federal employment, and that he knows or reasonably should know has not been made available to the general public.⁷⁹ This specifically includes information the employee knows or reasonably should know (a) is routinely exempt from disclosure under the Freedom of Information Act or (b) is designated as confidential by an agency.⁸⁰

Disclaimer Requirement. The federal regulation establishing ethical standards for Executive Branch employees (5 CFR § 2635) generally prohibits government employees from referencing their official position when writing as an outside occupation

employees. 5 CFR § 2635.807(a). As a general rule, the JER includes special Government employees within the definition of "employee." JER ¶ 1-211.a. None of the relevant JER provisions exclude special Government employees from their application. JER ¶¶ 2-207, 2-304, 3-307. Accordingly, (b) (6) would have been considered a (b) (6) for purposes of these ethics requirements.

⁷⁵ JER ¶ 1-300.c, e.

⁷⁶ JER ¶¶ 1-416.a, 1-412.a, 1-404.

⁷⁷ In addition to the prohibitions regarding compensation and disclaimers, employees are also disallowed from (a) accepting authorship opportunities that appears to have been offered primarily based on official position, rather than relevant expertise; and (b) accepting such an offer for compensation if the offeror has interests that may be affected substantially by the employee's duty performance. 5 CFR § 2635.807(a)(2)(i)(B)-(C). These prohibitions do not appear to be relevant here, and so will not be discussed in any depth.

⁷⁸ 5 CFR § 2635.807(a)(2)(i)(D). Compensation includes any form of consideration, remuneration or income, including royalties. 5 CFR § 2635.807(a)(2)(iii). There is an exception allowing compensation to be accepted for teaching courses as part of the regular curriculum of an elementary or secondary school, an institution of higher learning, or other government-funded educational program. 5 CFR § 2635.807(a)(3); Joint Ethics Regulation, DoD 5500.7-R, ¶ 2-207.

⁷⁹ 5 CFR §§ 2635.703(a)(2)(i)(D); 2635.703(b).

⁸⁰ 5 CFR § 2635.703(b)(1)-(2).

or activity.⁸¹ However, there are exceptions, allowing (a) the inclusion of the employee's title or position as a biographical detail if given no greater prominence than other such information;⁸² (b) use of title or position in an article published in a scientific or professional journal if accompanied by an adequate disclaimer;⁸³ and (c) the use of a general term of address – including military rank.⁸⁴

The JER expands the disclaimer requirement, requiring that

[a] DoD employee who uses or permits the use of his military grade or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with [the] writing, in accordance with 5 C.F.R. 2635.807(b) . . . shall make a disclaimer if the subject of the . . . writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's Agency . . . and the DoD employee has not been authorized by appropriate Agency authority to present that material as the Agency position.⁸⁵

Where required, the disclaimer must be prominent and must expressly state that the views expressed in the employee's writing are not necessarily those of the Agency.⁸⁶ Failure to include a proper disclaimer when required expressly constitutes a punishable violation of Article 92 of the Uniform Code of Military Justice.⁸⁷

Ethics Counselor Opinion "Safe Harbor." If an opinion regarding the matter has been rendered by a duly appointed ethics counselor, agency action may be limited:

Disciplinary action for violating [5 CFR § 2635] or any supplemental agency regulations will not be taken against an employee who has engaged in conduct *in good faith reliance*

⁸¹ 5 CFR § 2635.807(b).

⁸² 5 CFR § 2635.807(b)(1).

⁸³ 5 CFR § 2635.807(b)(2).

⁸⁴ 5 CFR § 2635.807(b)(3).

⁸⁵ JER, ¶¶ 2-207, 3-307.a.

⁸⁶ JER, ¶ 2-207.a-b; 3-307.a(1)-(2).

⁸⁷ The provisions of the JER requiring such disclaimers are in bold italic typeface. JER, ¶¶ 2-207, 3-307.a. Where used in the JER, such typeface indicates that the provision in question constitutes a lawful general order within the meaning of Article 92 of the Uniform Code of Military Justice. DoDD 5500.07, *Standards of Conduct* (29 Nov 2007) ¶ 2.2.6.1. Note, however, that an Agency may apparently be estopped from asserting ethical violations based on failure to include a disclaimer if appropriate Agency officials were offered the opportunity to intervene, but did not. The JER section regarding disclaimers notes that "[t]he commander, head of the organization, or supervisor may prohibit the employment or activity if he believes that the proposed activity will detract from readiness or pose a security risk." JER ¶ 2-303.a. Failure by Agency officials to act appropriately can apparently waive the right to assert violations of the section regarding disclaimers: "If action is not taken to prohibit the employment or activity, the DoD employee is free to engage in the employment or activity in keeping with other restrictions of this regulation." JER ¶ 2-303.b.

upon the advice of an agency ethics official, provided that the employee, in seeking such advice, *has made full disclosure of all relevant circumstances*. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, *good faith reliance* on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution.⁸⁸

As indicated by the added italics, the protection offered by this provision is not ironclad, depending on the circumstances under which the ethics opinion was obtained.

Note also that this language would apparently pertain only to the consequences of violations of government ethics rules: presumably, no such limitation would apply regarding the violation of other requirements discussed above (information security, OPSEC and inter-organizational reviews, etc). The JER expressly directs in the section regarding disclaimers that “[a] . . . writing that pertains to military matters, national security issues, or subjects of significant DoD concern *shall be reviewed for clearance by appropriate security and public affairs offices*.”⁸⁹

⁸⁸ 5 CFR § 2635.107(b).

⁸⁹ JER, DoD 5500.7-R, ¶ 3-307 (emphasis added).

ISSUE 9: SET FORTH THE FACTS AND CIRCUMSTANCES SURROUNDING THE 94TH DIV'S PRE-PUBLICATION REVIEW OF (b) (6) BOOK ENTITLED "(b) (6)." BE SURE TO ADDRESS THE FOLLOWING:

ISSUE 9A: WHEN WAS THE DRAFT BOOK SUBMITTED FOR REVIEW?

FINDING 9A: (b) (6) officially submitted a copy of (b) (6) manuscript for review to the (b) (6) for the 94th Division (DIV), (b) (6), sometime between August and October of 2009.¹ (b) (6) also submitted a copy of (b) (6) manuscript to for review the (b) (6) of the 94th DIV, (b) (6), in late November 2009.

ANALYSIS 9A: (b) (6) was the first 94th DIV official to receive and review (b) (6) completed manuscript. (b) (6) could not recall precisely when (b) (6) received a copy of the draft book, but (b) (6) thought it was probably in August or September of 2009, "plus or minus a couple of months" (Exhibit 86, p. 47).²

(b) (6) received a copy of (b) (6) manuscript by email in the "late November—window of '09"³ (Exhibit 79, p. 71). (b) (6) then printed out a hard copy of the manuscript and placed it in a binder, which he eventually gave to (b) (6) (Exhibit 79, p. 72).

(b) (6) sent (b) (6) legal review of the manuscript on 27 December 2009 (Exhibits 171-172). That same day, (b) (6) forwarded (b) (6) legal review, as well as three of (b) (6) email exchanges with (b) (6),⁴ to (b) (6) and requested (b) (6) concurrence and approval for (b) (6) the book, (b) (6) (Exhibit 146).

¹ (b) (6) had previously advised BG (b) (6), (b) (6), (b) (6), and (b) (6) of the need to conduct an OPSEC review in an e-mail, dated 17 March 2009 (Exhibit 121).

² (b) (6) initially testified that (b) (6) received the manuscript in August or September 2009; however, (b) (6) later indicated that (b) (6) recalled having the book for approximately two months before (b) (6) reviewed it in December of 2009 (Exhibit 86, pp. 47-48). Therefore, (b) (6) may have received the manuscript as late as October 2009.

³ (b) (6) may have provided (b) (6) with an updated version of the manuscript that incorporated (b) (6) input and recommendations in late December 2009, but it is not clear when (or if) this actually occurred (Exhibit 124).

⁴ The three e-mails that (b) (6) forwarded to (b) (6) were the e-mails that (b) (6) and (b) (6) ghostwriter sent to (b) (6) in response to (b) (6) request for "some assurance" that the 33 items of concern (b) (6) identified in (b) (6) book were not classified (Exhibits 142, 143, 147, and 148).

ISSUE 9B: WHO REVIEWED THE DRAFT BOOK?

FINDING 9B: (b) (6) and (b) (6) both reviewed (b) (6) entire book.⁵

ANALYSIS 9B: (b) (6) and (b) (6) both admitted that they reviewed (b) (6) book (Exhibits 79, 86, 111, and 150).

ISSUE 9C: WHAT WAS THE SCOPE OF EACH REVIEWER'S EXAMINATION OF THE DRAFT BOOK?

FINDING 9C:

(b) (6) conducted an ethics review of (b) (6) draft book to determine whether (b) (6) could accept compensation for the publication and sale of (b) (6) book, and to determine whether (b) (6) could use (b) (6) military title to identify (b) (6) in the book. In addition, (b) (6) conducted some sort of security and/or operational security (OPSEC) review of (b) (6) draft book, even though (b) (6) was not qualified to do so.

(b) (6) conducted security and OPSEC reviews of (b) (6) draft book, even though he was not qualified to do so.

ANALYSIS 9C: In accordance with applicable Department of Defense (DoD) and Army guidance, (b) (6) draft book required at least three separate reviews: (1) an ethics review; (2) a security review;⁸ and (3) an OPSEC review.⁹

⁵ (b) (6) also gave (b) (6) a copy of "Chapter One" of the manuscript to review; however, (b) (6) review was limited to providing (b) (6) "some frank feedback regarding the manner in which he [was] portrayed (b) (6) (Exhibit 119). Accordingly, (b) (6) review of a portion of (b) (6) draft book will not be discussed further in response to the questions posed in this issue.

⁶ (b) (6) and (b) (6) reviews were the only pre-publication reviews conducted prior to August 2010, when (b) (6) participated in a DoD-level review of (b) (6) manuscript (Exhibit 71, pp. 92-93, 110-111).

⁷ DoDD 5230.09, *Clearance of DoD Information for Public Release*, paragraph 4g, requires DoD personnel who have prepared information for public release through non-DoD fora or media, "while acting in a private capacity and not in connection with their official duties," to comply with the ethical standards in DoD Directive 5500.07, *Standards of Conduct*, and DoD 5500.7-R, *Joint Ethics Regulation*.

⁸ DoDD 5230.09, paragraph 4f, requires "non-active duty members of the Reserve Components" to "use the DoD security review process to ensure that information they submit for public release does not compromise national security." In addition, DoDD 5230.09, paragraph 4g, requires DoD personnel who have prepared information for public release through non-DoD fora or media, "while acting in a private capacity and not in connection with their official duties," to have that information "reviewed for clearance if it meets the criteria in DoDI 5230.29."

⁹ AR 530-1, *Operational Security (OPSEC)*, paragraph 2-1, requires all DA personnel, to include U.S. Army Reserve personnel, to "[p]rotect from disclosure any critical information and sensitive information to which they have personal access;" "[p]revent disclosure of critical and sensitive information in any public domain to include but not limited to the World Wide Web, open source publications, and the media;" and

The purpose of an ethics review is to determine whether an individual is complying with the ethical standards in DoDD 5500.07, Standards of Ethical Conduct, and DoD 5500.7-R, Joint Ethics Regulation (JER). Therefore, an ethics review must be conducted by an ethics counselor, like (b) (6).¹⁰ The purpose of a security review is to ensure that "information proposed for public release is examined for compliance established national and DoD policies and to determine that it contains no classified...information."¹¹ Therefore, a security review must ultimately be conducted by the Office of Security Review, after prior coordination "within the originating DoD Component to ensure that it reflects the organization's policy position; does not contain classified, controlled unclassified, or critical information requiring withholding; and is reviewed for operations security...."¹² Finally, the purpose of the OPSEC review is to ensure, *inter alia*, that classified information, critical information, and indicators of sensitive information is protected to maintain "essential secrecy, which is the condition achieved by the denial of critical information to adversaries"¹³ Therefore, the OPSEC review must be conducted by an OPSEC officer in addition to an individual's supervisor.¹⁴

(b) (6)

On or about 26 December 2009, (b) (6) provided (b) (6) with (b) (6) "legal review of the proposed novel titled (b) (6) (Exhibit 171). (b) (6) legal review advised (b) (5)

"[c]onsult with their immediate supervisor and their OPSEC Officer for an OPSEC review prior to publishing or posting information in a public forum."

¹⁰ IAW paragraph 1-214 of the Joint Ethics Regulation (JER), an "ethics counselor" is "a DoD employee appointed in writing...to generally assist in implementing and administering the DoD Component command's or organization's ethics program and to provide ethics advice to DoD employees of the DoD Component command or organization in accordance with [the JER]."

¹¹ DoDD 5230.09, Glossary.

¹² DoDI 5230.29, *Security and Policy Review of DoD Information for Public Release*, paragraph 4.b. and Enclosure 3, paragraph 2.a.

¹³ AR 530-1, paragraph 1-6b.

¹⁴ AR 530-1, paragraph 2-1g.

¹⁵ Based upon (b) (6) research, (b) (6) believed that only an ethics review and an OPSEC review were required. See Issue 9F.

AR 360-1, paragraph 6-6(c), to ensure that security was not compromised,¹⁶ as well as a responsibility under AR 530-1, paragraph 2-1(g), to consult with (b) (6) immediate supervisor and (b) (6) OPSEC officer for an OPSEC review prior to publishing the book (Exhibit 171).

(b) (6) repeatedly asserted that (b) (6) conducted only an ethics review of (b) (6) draft book (Exhibit 86, pp. 43-44, 52-56, 76-78, 86, 95, 105, 120, 126-130, and 158; Exhibit 150, pp. 49 and 86), and (b) (6) emphatically denied that (b) (6) conducted a security review (Exhibit 86, pp. 54, 66, 76-79, 82, 95, 105, 125-126, and 131-132; Exhibit 150, pp. 25, 38, and 49).¹⁷ In fact, (b) (6) testified alternatively that:

(b) (6), (b) (5)

¹⁶ (b) (6) specifically stated in (b) (6) legal opinion that:

(b) (6), (b) (5)

(Exhibit 171).

(b) (6)

86, p. 96). Therefore, it is reasonable to assume that (b) (6) was referring to both reviews when (b) (6) denied that he conducted a "security review."

¹⁸ In (b) (6) first interview (b) (6) acknowledged the apparent inconsistency between AR 360-1 and AR 530-1, stating the lack of any requirement for review in AR 360-1 was (b) (6) (Exhibit 86, p. 35).

¹⁹ (b) (5)

(Exhibit 150, pp. 38, 52-53, 56, 86).

²⁰ (b) (6) (b) (6)

(Exhibit 171).²¹

(b) (6)

(b) (6)

(b) (6)

²¹ (b) (6) denied that paragraph 4c of (b) legal review constituted a security review (Exhibit 86, pp. 54-57, 80-82, 86). (b) (6) 86, p. 64).

(b) (6) but (b) admitted telling (b) (6) that he had concerns "on the security aspect" of (b) (6) book (Exhibit 86, pp. 78-79).

²³ (b) (6) sent (b) (6) an email on 30 November 2009, in which he stated: "Hey, (b) (6) – don't want to be a bother but I was hoping you might be able to complete the *classification review* of my novel..., so that (b) (6) can sign off on it, as my supervisor per AR 530-1 OPSEC, prior to his departure..." (Exhibit 170) (emphasis added). (b) (6) then reiterated that (b) ghostwriter "can provide the unclassified references she found to not the intelligence information and methods we discuss in the book (i.e., prove that the information was available from other sources) or other reference books of similar nature that contain the same type of information" (Exhibit 170). (b) (6) (b) (6)

(b) (6) (b) (6) stated that (b) would "have a number of questions" when (b) finished reading the book and (b) requested (b) (6) to bring his "supporting documents/cites this) weekend...to discuss" (Exhibit 170).

²⁴ (b) (6) did not attempt to verify whether (b) (6) assurances were true because (b) did not think it was (b) responsibility to do so (Exhibit 86, p. 108; Exhibit 150, p. 86). In response to a question regarding whether (b) received information from (b) (6) ghostwriter, (b) (6) made the following comments in (b) first interview:

(b) (6)

(b) (6)

On or about 4 January 2010, (b) (6) prepared a Memorandum for Record (MFR) to memorialize his review of (b) (6) draft book²⁵ (Exhibit 151). The MFR stated that (b) (6) had read the draft manuscript “to conduct an initial OPSEC/Security Scan and review for ethical standards,” and that (b) (6) “found no obvious security or legal issues in the DRAFT manuscript provided for review” (Exhibit 151). Accordingly, (b) (6) imposed “no objection on legal or operational security grounds for the publication of (b) (6)] book;” he found the book “sufficient for publication;” and he directed (b) (6) attention back to (b) (6) legal opinion “as guidance in (b) (6)] next step to publication of [the] manuscript” (Exhibit 151).

(b) (6)
MFR indicated that he had conducted “an initial OPSEC/**Security Scan**” (Exhibit 151) (emphasis added). Second, in response to a question regarding his responsibility to ensure that security is not compromised, (b) (6) said: “To advise” (Exhibit 79, p. 44). However, he then stated that he and (b) (6) felt that the provision in AR 360-1 that appeared to eliminate the requirement to review manuscripts written by (b) (6) not on active duty “was not appropriate” (Exhibit 79, p. 44). As a result, he and (b) (6) “took the extra step” of providing comments on information in the draft book that they felt was “suspicious” or “not appropriate in nature” (Exhibit 79, pp. 44-45, 110-111; Exhibit 111, pp. 21-22).²⁷ Third, (b) (6) ultimately admitted in his first interview (b) (6)

(b) (6)

(Exhibit 86, pp. 124-125). Likewise (b) (6) made the following comments in (b) (6) second interview:

(b) (6)

(Exhibit 150, p. 56).

²⁵ Based upon (b) (6) research, (b) (6) believed that only an ethics review and an OPSEC review were required. See Issue 9F.

²⁶ (b) (6) repeatedly stated that he conducted only an OPSEC review (Exhibit 79, pp. 42-45, 47; Exhibit 111, pp. 16, 22).

²⁷ (b) (6) later explained his standard of review as follows: “If it just seemed out of place. If it seemed odd, if it didn’t seem to fit. If there was something that just did not look right, it was questioned” (Exhibit 79, p. 111).

(b) (6) "jointly conducted an OPSEC review and a security review as to classified information" (Exhibit 79, p. 109). Fourth, (b) (6) sent (b) (6) an email on 28 December 2009 in which he indicated that he had a couple of questions that were not answered in (b) (6) email to (b) (6) and "one was on something possible (sic) being classified and if not maybe FOUO" (Exhibit 149). Fifth, (b) (6) sought assurances from (b) (6) and (b) (6) ghostwriter that they had obtained the information in the book from "open source material" (Exhibit 79, pp. 19, 54, 56, 79-80, 92, 101; Exhibit 111, p. 28). Finally, (b) (6) noted in his 11 May 2010 email to BG Le Doux that he had advised (b) (6) to ensure "that there was no seepage of classified information and that OPSEC was maintained," and he implied that he had assisted in the security review by stating:

Based on (b) (6) I have a working knowledge of info that may be considered classified or information that may not be releasable to the public. Upon reviewing the book I provided (b) (6) numerous comments on what I determined to be possible issues and maybe consider borderline OPSEC. (b) (6) addressed each and every question/issue presented and in most cases the information had already been published in an open source of some sort. For those areas still in question (b) (6) removed from the manuscript any reference of such.

(Exhibit 124).

(b) (6) security and OPSEC reviews were superficial and completely inadequate because (b) (6) (b) (6) Exhibit 79, pp. 10, 12, 13, 15, 79-80, 89, 111; Exhibit 111, pp. 20-21, 29), (b) (6) and (b) (6) regarding the security concerns he identified in (b) (6) draft book (Exhibit 79, pp. 20, 47; Exhibit 111, p. 38).

ISSUE 9D: WHAT WAS EACH REVIEWER'S DETERMINATION REGARDING THE PROPRIETY OF THE DRAFT BOOK'S PUBLICATION?

FINDING 9D: Neither (b) (6) nor (b) (6) imposed any objections regarding the propriety of the draft book's publication after (b) (6) addressed the security concerns they raised during their individual reviews.

ANALYSIS 9D: See the Analysis for Issue 9C, above, for a more detailed discussion regarding the contents of (b) (6) legal opinion and (b) (6) MFR.²⁸

²⁸ Prior to finding (b) (6) draft book (b) (5), (b) (6) " in his 4 January 2010 MFR, (b) (6) told (b) (6) in a 28 December 2009 email:

I know you wanted to complete by 1 Jan and if I had to give you the nod now I would do so but still would like to go face to face on a few questions I have that I THINK are easy answers but overall do not see any BIG issues that have not already been addressed or discussed before I put my sig on paper for this.